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20 Nov., 1888.

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BRIEF OF A TITLE

33.

IN

THE SEVENTEEN TOWNSHIPS

IN THE COUNTY OF LUZERNE:

A SYLLABUS

OF THE

CONTROVERSY BETWEEN CONNECTICUT AND PENNSYLVANIA.

*Read by request before the Historical Society of Pennsylvania,
November 10, 1879.*



Mc...
BY HENRY M. HOYT.

HARRISBURG:

JANE S. HART, PRINTER AND BINDER.
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THE HISTORICAL SOCIETY OF PENNSYLVANIA.
PHILADELPHIA, November 10, 1879.

At a stated meeting of "The Historical Society of Pennsylvania," held at the Hall of the Society, on the evening of Monday, November 10, 1879, it was, on motion of George W. Biddle, Esq., seconded by the Hon. Peter McCall, unanimously

Resolved, That the Historical Society of Pennsylvania deem the delivery of a discourse before it by the Governor of the Commonwealth, upon an important historical subject connected with the honor of the same—the first occasion in the history of the Society that its members have been thus gratified—an event of such importance as to demand from it a special expression of its satisfaction.

Resolved, That the Society sees in this act of the Chief Magistrate of the Commonwealth an assurance, most welcome to it, that the objects of the Society are appreciated in their full value by the Government of the State, and sees also an augury of the happiest kind for the stability and future usefulness of the institution.

Resolved, That the thanks of the Society are due, in an eminent degree, and are hereby given to His Excellency the Honorable Henry M. Hoyt, Governor of Pennsylvania, for his discourse pronounced this evening, a discourse distinguished alike by research and ability.

Resolved, That a copy of the discourse be requested for preservation in the Society's Archives, and for publication under the supervision of the Trustees of the Publication Fund.—*Extract from the minutes.*

Attest :

WM. BROOKE RAWLE,
Recording Secretary.

CORRESPONDENCE.

HALL HISTORICAL SOCIETY OF PENNSYLVANIA,
June 30, 1879.

To the Honorable HENRY M. HOYT, *Harrisburg*:

SIR: Among those parts of the history of Pennsylvania which have occupied the attention, at different times, of this Society, is that long pending and important one of what are called "the Connecticut claims," those assertions of title by which the State of Connecticut professed herself to be the owner of a large portion of what at present constitutes the State of Pennsylvania, over which you preside.

Few claims ever made in this State have called forth a greater amount of research and legal ability, both in the support and in the refutation of them. The records of the arguments at the bar upon them remain, but imperfectly. But the numerous and ably written pamphlets which the claim evoked still exist to show what zeal the subject aroused, and what learning and talents it engaged.

It is known to us that in the course of your professional life, the history of this great and long-waged controversy, which embraced the region of your residence and former practice at the bar, and the history, also, of its final happy settlement, have engaged a considerable share of your attention; and, in view of this fact, of the intrinsic interest of the subject, and of its now falling somewhat into matter of traditionary recollection, the council of the Society, at a late meeting, appointed us a committee to say to you, sir, that it would afford to the Society, and we doubt not also to the people of our city and State, a high gratification, if, at such time as your engagements might allow, you would condescend, in a discourse to be delivered before the Society, to give to us the benefit of your researches and reflections on the topic.

We have the honor to be, sir, with the highest respect and esteem, your very obedient servants,

J. W. WALLACE, <i>Prest.</i> ,	HORATIO G. JONES,
CALEB COPE,	GEORGE DEB. KEIM,
HENRY C. CAREY,	CRAIG BIDDLE,
C. J. STILLE,	CHAS. WILLING, M. D.,
JOHN JORDAN, JR.,	WILLIAM B. RAWLE,
FREDERICK FRALEY,	C. R. HILDEBURN,
RICHARD S. SMITH,	R. M. CADWALADER.
JOHN B. GEST,	J. W. BRINTON,
W. M. TILGHMAN,	
<i>Committee of the Historical Society of Pennsylvania.</i>	

EXECUTIVE CHAMBER,
HARRISBURG, 14th July, 1879.

JOHN WILLIAM WALLACE, LL.D.,

President of the Historical Society of Penn'a :

MY DEAR SIR: Your favor of the 30th ultimo, inclosing a communication from a committee of the Historical Society of Pennsylvania, is before me. I am therein requested to deliver a historical discourse on the "Connecticut Claims."

I assure you that I feel a very high degree of pride at this request from so respectable a source. I shall undertake to comply, but with no expectation of meeting the high views you hold of my special preparedness on this special topic. In a *legal* way I had run upon "The Seventeen Townships" business, but the legal phase of the controversy by no means covers it all. It will, however, give me pleasure to undertake in the Autumn to give your Society a digest of the case, as I understand it.

Very respectfully, yours,

HENRY M. HOYT.

THE SEVENTEEN TOWNSHIPS.

Mr. President, Ladies, and Gentlemen of the Historical Society of Pennsylvania :

Some years ago, in the course of professional employment, I had occasion to arrange some of the *data* embraced in the following "Brief." They consisted mainly of charters, deeds, and dates, and were intended for professional use. They were too meagre for the present purpose. They should embrace a wider range of *facts*, their relations, and appropriate deductions from them. The controversy herein attempted to be set forth, one hundred years ago, was raging with great fierceness, evoked strong partisanship, and was urged, on both sides, by the highest skill of statesmen and lawyers. In its origin, it was a controversy over the political jurisdiction and right of soil in a tract of country containing more than five millions of acres of land, claimed by Pennsylvania and Connecticut, as embraced, respectively, in their charter grants. It involved the lives of hundreds, was the ruin of thousands, and cost the State millions. It wore out one entire generation. It was righteously settled in the end. We can afford now to look at it without bias or bitter feeling.

My aim will be to put in evidence such documents, facts, and statutes as I believe would be admissible in a court of law in the trial of the cause, and only such. And I shall submit such arguments, objections, and conclusions as have been urged by both sides, fairly and as fully as I am in possession of them—premiting that the "literature" of this case is scattered through hundreds of "tracts," "statements," and "examinations,"* and is of great interest—unfortunately, much of it inaccessible to one who is writing *currente calamo*. The material at hand is entirely beyond my capacity to condense into any proper limits of a discourse in this presence, and I have been compelled to "digest" it free from the romantic elements which everywhere naturally color it. The temptation is strong, all along the route, to branch off into stirring and attractive episodes.

I have freely appropriated the facts collected and comments of Miner, "History of Wyoming;" Chapman, "History of Wy-

* See Appendix.

oming;" Pearce, "Annals of Luzerne;" with information derived from Hon. Steuben Jenkins, of Wyoming; Hon. Stewart Pearce, of Wilkes-Barre; Dr. Egle, of Harrisburg, and from free access to the records of this Society.

Avoiding further prefatory remarks, I at once enter upon our undertaking. So far as possible, the "Brief" will proceed in the chronological order of the events. It will embrace:

The royal charters and grants under which the Colony of Connecticut and the Province of Pennsylvania respectively claim, with a statement of the arguments and objections by which they have been attempted to be sustained or overthrown:

The Purchases by the Colony and Province from the Indians:

The Possession taken by the parties respectively:

The Decree of Trenton: and

The Statutes of Pennsylvania after that Decree, and the decisions of the courts under them.

This will make up a "Brief of a title in the seventeen townships of Luzerne county"—"a Syllabus of the controversy between Connecticut and Pennsylvania."

I.

THE CONNECTICUT PATENTS AND DEEDS.

The English having discovered North America, from latitude 34° to 48°, and made entry upon it, assumed a right to it; and divided that territory into two great Provinces, called South Virginia and North Virginia, or New England. King James I, by patent, dated 10 April, 1606, granted to Thomas Gates *et al.*, called "The London Company," leave to plant a colony anywhere between 34° and 41° north latitude. Under this charter and those which grew out of it, Virginia and the Southern States were settled. These grants were to extend "up into the land throughout, *from sea to sea, west and northwest.*" The same year King James granted to Thomas Hanham *et al.* like leave to plant anywhere between 38° and 45° north latitude. The King of England, as we shall subsequently see, was endeavoring to lay as extensive and as strong a claim to territory in America

as against other nations, as possible—"he was to catch that catch could."

We now come to the line of the title in hand—

1620, Nov. 3. LETTERS PATENT. *King James I* to the *Duke of Lenox et al.*, incorporated under the name, "The Council established at Plymouth, in the county of Devon, *for the planting, ruling, ordering, and governing of New England in America,*" "granting to them, and their successors, and assigns, all that part of America lying and being *in breadth*, from 40° of north-erly latitude, from the equinoctial line, to the 48° of the same northerly latitude, inclusively, and *in length of, and within all the breadth aforesaid, throughout the main lands, from sea to sea*, together, also, with all firm lands, soils, grounds, havens, ports, rivers, waters, fishings, mines, and minerals, as well royal mines of gold and silver, as other mines and minerals, precious stones, quarries, and all and singular other commodities, jurisdictions, royalties, privileges, franchises, and preheminences, both within the said tract of land upon the main, and also within the islands and seas adjoining: *Provided*, always, that the said islands or any part of the premises hereinbefore mentioned, and by these presents intended and meant to be granted, be *not actually possessed or inhabited by any other Christian Prince or State*, nor be within that Southern Colony heretofore by us granted to be planted by divers of our loving subjects, in the south part.

"And to the end that the said territories may forever be more particularly known and distinguished, our will and pleasure is that the same shall from henceforth be nominated, termed, and called by the name of New England in America, and by that name * * * * have continuance forever.

"And, further, our will and pleasure is, and we do by these presents charge, command, warrant, and authorize the said Council and their successors, or the major part of them, which shall be present and assembled for that purpose, shall, from time to time, under their common seal, *distribute, convey, assign, and set over* such particular proportions of lands, tenements, and hereditaments, as are by these presents formerly granted," &c.

The description of the lands here granted is in words which will help explain the descriptive words in several subsequent grants, derived from this general one. The exception in the

proviso applied to the possessions of the French at *St. Croix*, and of the Dutch and Swedes upon and near *Hudson* and *Delaware Rivers*.

The southern boundary of Pennsylvania is nearly in line of latitude, 40° north.

1628, March 19. DEED. *The Council at Plymouth* to *Sir Henry Roswell et al.*, their heirs and assigns and their associates forever, for "all that part of New England in America which lies and extends between a great river, there commonly called *Menomack*, alias *Merrimac*, and a certain other river, there called *Charles River*, being in the bottom of a certain bay there, commonly called *Massachusetts*, * * * * and all lands and hereditaments whatsoever lying within the limits aforesaid, north and south, in latitude and in breadth, and in length and longitude, of and within all the breadth aforesaid, throughout the main lands there from the *Atlantic* and *Western Sea* and *Ocean* on the east part, to the *South Sea* on the west part." * * * *

The southern bounds of this grant were afterwards settled to be along the 42° 2' of latitude. The northern boundary of Pennsylvania is on 42°.

1629, March 4. LETTERS PATENT. *King Charles I* to *Sir Henry Roswell et al.*, for the same lands, with the *proviso* excepting lands in the actual possession of any other Christian Prince or State.

1631, March 19. DEED. *Robert, Earl of Warwick*, President of the Council of Plymouth, to *Lord Say and Seal*, *Lord Brook*, *John Pym*; *John Hampden et al.*, for "All that part of New England in America, which lies and extends itself from a river there called *Narragansett River*, the space of forty leagues upon a straight line near the shore, towards the southwest, west, and by south or west, as the coast lieth, towards *Virginia*, accounting three English miles to the league; and also, all and singular the lands and hereditaments whatsoever lying and being within the lands aforesaid, north and south, in latitude and breadth, and in length and longitude of and within all the breadth aforesaid, throughout the main lands there, from the *Western Ocean* to the *South Sea*, and all, &c."

It is upon the construction of this grant, that much of the controversy has turned.

It would seem that in 1630 the Council of Plymouth had

granted to the Earl of Warwick a large tract of land to the southward of the grant to Roswell, including what remained of the Plymouth Company's territory south to the 40° of latitude. Hutchinson says, Vol. 1, p. 84: "The Earl of Warwick obtained a grant of the sea coast from Narragansett river to the southwest forty leagues to keep the breadth to the South Sea."

President Clap describes it thus: "All that part of New England which lies west from Narragansett river 120 miles on the Sea Coast, and from thence in latitude and breadth aforesaid to the South Sea. This grant extends from Point Judith to New York, and from thence a west line to the South Sea; and if we take Narragansett river in its whole length, this tract will extend as far north as Worcester. It comprehends the whole colony of Connecticut, and much more."

Neal, Vol. 1, p. 148, gives the same account of this patent, and represents it as running west to the South Sea.

Douglass, Vol. 11, p. 90-160, says, "this grant was east and west from sea to sea; in length from sea to sea."

The grant was confirmed under the Great Seal of England, the same year, but I have been able to find no copy of it.

Lord Say and Seal and his associates entered upon their grants, and appointed John Winthrop their agent, who planted a town at the mouth of the Connecticut river, which in honor of his patrons, he called "Saybrook."

A number of English colonists had settled on the Connecticut river, and finding themselves outside of the Massachusetts patent, formed themselves in a voluntary political association, by the name of "the Colony of Connecticut," adopted a plan of government, purchased of Lord Say and others their grant aforesaid, for £16,000, and in 1661, they petitioned King Charles II, setting forth the above facts, for a "Charter of Government," such as they had adopted, with powers equal to those conferred on Massachusetts, or "the Lords and Gentlemen whose jurisdiction rights they had purchased," and to confirm their grant, &c.

(One is constrained to wonder if the history of Old England itself would not have been very different, had Pym and Hampden entered upon this grant, and cast their lot in the "New England.")

It must be borne in mind, that the grantees in the Plymouth deed, while they could pass the "right of soil" by deed, could not transfer with it "the jurisdiction" or "powers of government." The latter must be by grant from the Crown.

1662, April 20. LETTERS PATENT. *King Charles II to John Winthrop et. al.*, incorporating them as a body politic, by the name of "The Governor and Company of the English Colony of Connecticut, in New England, in America," and granting and

confirming to them "all that part of our dominions in New England, in America, bounded on the east by Narragansett river, commonly called Narragansett bay, where the said river falleth into the sea; and on the north by the line of the Massachusetts Colony, running from east to west; that is to say, from the said Narragansett bay in the east, to the South sea on the west part, together also all and singular other commodities jurisdictions, royalties, privileges, franchises, preheminencies, &c., &c. * * * * And lastly, we do for us, our heirs and successors, grant, &c., that these our Letters Patent shall be firm and effectual in the law to all intents, constructions and purposes whatsoever, according to our true intent and meaning hereinbefore declared, as shall be considered, reported, and adjudged most favorable, and for the best benefit and behoof of the said Governor and company, and their successors, although express mention of the yearly value or certainty of the premises, or of any other gifts or grants by us, or any of our progenitors or predecessors, heretofore made to the said Governor and company, &c., is not made, or any statute, act, ordinance, provision, proclamation, or restriction heretofore had, made, enacted, ordained or provided, or any other matter or thing whatever to the contrary," &c.*

This grant is relied upon, by those claiming under it, as effectual and irrevocable with respect to its extent, quantity, and duration. It was, in fact, a new grant, with an independent origin. Having parceled out in various grants the whole of the territory conveyed in the original patent of *New England*, the Plymouth Council, in 1635, had made a final resignation of their patent to the Crown, to enable the King to make grants

* It would be a serious blunder to belittle this charter by viewing it simply as a link in this chain of title. Under John Winthrop it became "the beginning of the great things" on this continent. "They had purchased their lands of the assigns of the Earl of Warwick, and from Uncas they had bought the territory of the Mohegans; and the news of the restoration awakened a desire for a patent. But the little colony proceeded warily; they draughted among themselves the instrument which they desired the King to ratify; and they could plead for their possessions their rights by purchase, by conquest from the Pequods, and by their own labor which had redeemed the wilderness."

"The courtiers of King Charles, who themselves had an eye to possessions in America, suggested no limitations; and perhaps it was believed, that Connecticut would serve to balance the power of Massachusetts."

"The charter, disregarding the hesitancy of New Haven, the rights of the colony of New Belgium and the claims of Spain on the Pacific, connected New Haven with Hartford in one colony, of which the limits were extended from the Narragansett river to the Pacific ocean. How strange is the connection of events! Winthrop not only secured to his State a peaceful century of colonial existence, but prepared the claim for western lands."

"With regard to powers of government, the charter was still more extraordinary. It conferred on the colonists unqualified power to govern themselves."

"Connecticut was independent, except in name. Charles II and Clarendon thought they had created a close corporation, and they had really sanctioned a democracy."—*Bancroft, Vol. II. pp. 51, 54, 55.*

of the, "powers of government" to those holding the "right of soil."*

An interval of nearly a hundred years elapses before we come to the next step in this paper title. Many colonies had been formed; Indian tribes of great number and power had been dealt with: the French and English were preparing for a struggle for the possession of the Continent—the English, especially, pursuing the policy of pushing their colonies westward into unoccupied lands. The colonies were already making a stand against the encroachments of the Crown and preparing to resist his "prerogatives." The Great Council, composed of delegates from all the colonies, and from the most powerful tribes of Indians—Six Nations and others—was about to meet in Albany in 1754. (See Bancroft's History, Vol. IV, p. 120.)

In 1753 about six hundred inhabitants of the colony of Connecticut voluntarily associated themselves under the name of "The Susquehanna Company" for the purpose of planting a new colony, within what they supposed the charter bounds of the colony, west of the Delaware river, and subsequently to apply to the King for the charter of government for the new colony.† As a preliminary to all this it was deemed ex-

*"In 1635 the Plymouth Company came to an end. Its existence had done no good, either to members of the company or to others, and accordingly they resolved to surrender their patent to the King. The only lasting effect of the company was to create confusion by the reckless way in which it had granted the same lands over and over again, to different occupants. In the autumn of 1635 vigorous measures were taken by the English government against Massachusetts. A writ of *quo warranto*, like that which had overthrown the Virginia Company, was issued, and the Massachusetts charter was declared null and void."

"A strict order was sent out demanding the charter. The colony sent back, not the charter, but a protest against the injustice of taking it from them. It seemed as if they would have either to keep it by force or to yield. But the English government soon had more serious matters to attend to at home. By 1639 the Scotch were in arms against Charles I. The civil war took off all attention from the colonies, and when peace was restored the Puritans had the upper hand, and the charter of Massachusetts was safe."—*Freeman's Historical Course*, "United States," pp. 82, 83.

† I quote from History of Windham County, Connecticut, by Miss Larned. The extract will show the spirit and purpose of the original projectors.

"The marvelous richness and beauty of the Susquehanna valley were already celebrated, and now it was proposed to plant a colony in this beautiful region, and thus incorporate it into the jurisdiction of Connecticut. The originators of this notable scheme are unknown, but it was soon promulgated and discussed in several Windham county townships, and early in 1753 thus laid before the General Assembly:—

"*To the Honorable Assembly, to be holden at Hartford, second Thursday of May next, the memorial of the subscribers, inhabitants of Farmington, Windham, Canterbury, Plainfield, Voluntown, and in several other towns, all of Connecticut Colony, humbly sheweth:*

"*That whereas, There is a large quantity of land lying upon a river called Susquehanna, and also at a place called Quiwanmick, and that there is no English inhabitants that lives on said land, nor near thereunto, and the same lies about seventy miles west of Delaware River, and, as we suppose, within the charter of the Colony of Connecticut, and that there is a number of Indians that live on or near the place of land aforesaid, who lay claim to the same, and we, the subscribers, to the number of One hundred persons, who are very desirous to go and inhabit the aforesaid land, and at the place aforesaid, provided that we can obtain a quiet or quit-Claim of the Honorable Assembly, of a tract of land lying at the place aforesaid, and to contain a quantity of sixteen miles square, to lie on both sides Susquehanna River, and as the Indians lay claim to the same, we propose to purchase of them their right, so as to be at peace with them; whereupon, we humbly pray, that the Honorable Assembly would grant to us a quit-Claim of the aforesaid tract, or so much as the Honorable Assembly shall think best, upon such terms as your Honors shall think reasonable, and in such a way and manner, that in case we cannot hold and enjoy the same by virtue of said grant, yet notwithstanding the same not to be hurtful or prejudicial on any account to this*

pedient to extinguish the title of the "Six Nations" to the land within the limits of the "new plantation." This was attempted to be done.

"Colony, and in case we can Hold and possess said land, then to be always under the government, and subject to the laws and discipline of this Colony, and provided that we, the said subscribers, shall within three years next coming lay the same out in equal proportion, and settle upon the same, as also purchase the right of the Natives as aforesaid, or in some other way grant us the land aforesaid, as your Honors shall think best, as we, in duty bound, shall ever pray.

"March 29, 1763."

The project soon outgrew county limits, and embraced the whole colony. "Offering the promise of romantic and stirring adventure, Colonial aggrandizement and pecuniary profits, it was no marvel it gained so strong a hold upon popular favor."

THE PENNSYLVANIA VIEW OF THE CASE IN 1754.

Report of John Armstrong, sent by the Governor of Pennsylvania to the Colony of Connecticut with Letters and to make Discoveries of an illegal Purchase of Lands within the Province of Pennsylvania by a number of Persons in the Colony of Connecticut.

"Then received Information of Mr. John Lloyd Merchant at Stanford in Connecticut, that Mr. Elderkin said he understood the Matter, that an Indian Deed was already obtained from several of the Six Nation Chiefs, that he the said Elderkin was concerned in the Lands, that the Purchasers had the countenance of their Government in what they had done, would settle four hundred Persons early in the Spring; and if the Proprietaries of Pennsylvania had any objections he would be glad how soon the Matter had a fair Trial and was brought to issue.

28th & 29. Was informed at New Haven (where I delivered the Letters of the Honourable Robert Hunter Morris in regard to the above Purchase to the Governor of Connecticut) by Capt. David Wooster Lieutenant Nathaniel Whiting and Mr. Thomas Darling, that the Purchase was entirely of a private nature contrary to their own as well as our Laws, that the Government (as such) had nothing to do with it, and that Mr. Elderkin was certainly mistaken if he so much as insinuated any Licence to have been given by the Governor for that Purpose. To the same Imports poke the Governor, the President of New Haven College and sundry other Gentlemen.

Mr. Darling shewed me a Letter from his Correspondent near Hartford, describing the Boundaries of the Purchase together with the Procedure of the People concerned at a late Convention at Hartford; where the better to conduct their affairs they chose a Committee, a Treasurer and Clerk.

The Lands purchased is the Forty Second Degree of Northern Latitude beginning Ten miles Eastward of the Easternmost Branch of the River Susquehanna and from thence to the End of Two Degrees of Longitude.

The Gentlemen of the Committee are Major Phineas Lyman, Major Roger Wolcott, Col. Samuel Tolcott, Major Eliphalet Dyar, Mr. Edwards, Mr. George Wyllis.

The latter is Secretary of the Colony and Treasurer to the Company; for so they are called, the Susquehanna Company.

'Tis said the Committee are men of great natural understanding as well as considerable acquisitions.

There were formerly Five Hundred Subscribers at Seven Dollars each, to which are now added Three Hundred at Nine Dollars each—There are Two of the Sachems who have refused to sign the Deed, until they are paid One Thousand Dollars more than the other Sachems are content with.

The Generality of the more knowing People despise the Scheme as wild and preposterous; but some others mightily cry up the antiquity and extent of their Charter, wherein their claims are chiefly built. This is answered to by arguments from sundry Topics.

1st. From the Priority even to theirs of the North and South Virginia Companies Grant dated 1606.

2. From the agreement between his Majesties Commissioners and the Governor and Commissioners appointed by the Colony of Connecticut, who fixed the Western Boundary of the Colony of Connecticut—'Tis true, they say there was a second Line established November 23d 1683 more in their Favour but it was only a Correction of the first agreement in December 1st 1684, which confines the Colony of Connecticut to narrower Bounds than the first agreement gave them—this last was confirmed by his Majesty in Council March 28th 1700.

3dly. From the opposition they must inevitably meet with from the great number of Indians, now constrained by the encroachments of the French to retire to these Lands, not only for sake of Hunting, but for the safety of their Wives and Children.

4thly. From the great Distance of these Lands from the Seat of Government and the Difficulty of coextending Jurisdiction with their Property &c.

When the Governors Letters are laid before the Upper and Lower Houses, they will doubtless put a Stop to any considerable number coming in the Spring to settle on the Susquehanna Lands, yet it is highly probable that as matters are carried to so great a length some Number will come.

Several Gentlemen gave it as their opinion, that the Result of the Committee in re-

1754, July 11. DEED. *Eighteen "chiefs," "sachems," and "heads of the Five Nations,"* in consideration of £2,000, to those associated as the Susquehanna Company, for lands described as follows: "Which said given and granted tract of land is butted, bounded, and described as follows, viz: Beginning from the one and fortieth degree of north latitude, at ten miles distance east of Susquehanna river, and from thence, with a northerly line, ten miles east of the river, to the forty-second or beginning of the forty-third degree of north latitude, and to extend west two degrees of longitude, one hundred and twenty miles, and from thence south to the beginning of the forty-second degree, and from thence east to the aforementioned bounds, which is ten miles east of the Susquehanna river, together," &c.*

1755, May. ACT OF ASSEMBLY. Colony of Connecticut, in which, after reciting that the lands were within the limits of their charter, and upon petition of the Susquehanna Company, it was resolved by this Assembly, "that they are of opinion that the peaceably and orderly erecting and carrying on some new and well-regulated colony or plantation on the lands abovementioned would greatly tend to fix and secure said Indian nations in allegiance to his Majesty, and accordingly hereby manifest their ready acquiescence therein, if it should be his majesty's royal pleasure to grant said land to said petitioners, and thereon erect and settle a new colony, in such form * * * as might be consistent with his Royal wisdom, and also take leave humbly to recommend the said petitioners to his Royal favors in the premises."†

The southern line of this grant enters Pennsylvania near Stroudsburg, passing westward, through Conyngham, in Luzerne county, Bloomsburg, Lewisburg, and Clearfield, and so on; thence north, running a little east of Smithport, to the boundary line between Pennsylvania and New York.

gard to Charter would be either in some time to put such men at the Head of Government (of which by the Voice of the Populace they have an annual opportunity) as would confirm their Indian Title, or that One or Two of the Committee would early in the Spring go to England and solicit his Majesty for a Charter of Incorporation of the same Tenor with the Old, which for various considerations they made no doubt, they should obtain.

JOHN ARMSTRONG "

Philadelphia 11th December 1754.

*The number of grantees in this deed was	694
Of these, from Connecticut, were,	638
" from Rhode Island, "	33
" from Pennsylvania, "	10
" from Massachusetts, "	5
" from New York, "	8

†Samuel Hazard, of Philadelphia, in 1755, had presented a like petition for a colony, one hundred miles westward of the westerly boundaries of Pennsylvania, which was approved, also.

This territory includes the principal part of the counties of Luzerne, Lackawanna, Wyoming, Bradford, Columbia, Montour, Clearfield, Elk, and McKean; smaller portions of Susquehanna, Northumberland, Union, and Centre, and the whole of Sullivan, Lycoming, Tioga, Potter, and Cameron. It has a present population of more than half a million people.

This is a goodly domain, and would have made a "solid" little State, as large and populous as the present State of Connecticut. The King never acted favorably upon the application for the charter.

II.

THE CHARTER AND DEEDS TO WILLIAM PENN.

✓ 1681, March 4. CHARTER. *Charles II, King of England, to William Penn*, for all that territory "Bounded east by Delaware river, from twelve miles distance northward from New Castle town to the three and fortieth degree of north latitude, if the said river do extend so far northward; but if the said river should not extend so far northward, then by said river so far as it doth extend; and from the head of the said river, the eastern bounds are to be determined by a meridional line to be drawn from the head of said river to the three and fortieth degree—the said land to extend westward five degrees in longitude, to be computed from the said east bounds; and the said lands to be bounded on the north by the three and fortieth degree of north latitude, and on the south by a circle drawn at twelve miles distance from Newcastle, northward and westward unto the beginning of the fortieth degree of northern latitude, and then by a straight line westward to the limits of longitude westward," &c., with usual grant of jurisdiction, &c.*

* *William Penn*, when invested by his charter, with all "the powers and pre-eminences necessary" for government, issued proclamation, as follows:

"MY FRIENDS: I wish you all happiness here and hereafter. These are to let you know that it hath pleased God in his Providence to cast you within my Lott and Care. It is a buslines, that though I never undertook before, yet God has given me an understanding of my duty, and an honest minde to doe it uprightly. I hope you will not be troubled at your chainge and the King's choice; for you are now fixt, at the mercy of no Governour that comes to make his fortune. *You shall be governed by laws of your own making*, and live a free, and if you will, a sober and industrious People. I shall not usurp the rights of any or oppress his person. God has furnished me with a better resolution, and has given me his grace to keep it. In short, whatever sober and free men can reasonably desire for the security and improvement of their own happi-

The grant of this charter was opposed by the Privy Council, by the Council for Plantations, by the Proprietors of New York and Maryland.

1736, Oct. 11. DEED. *Twenty-three Chiefs of the Six Nations*, ("the Onondagoes, Senecas, Cayoogoes, Oneydas, Tuscaroroos, and Mohocks,") to *John, Thomas, and Richard Penn*, for their claim "to all lands on both sides the river Susquehanna, from the mouth thereof as far northward, or up the said river as that ridge of hills called the Tyoninhasachto, or endless mountains (Blue hills) westward to the setting of the sun, and eastward to the furthest springs of the waters running into the said river."

✓ 1736, Oct. 25. DEED. *Twenty-three Chiefs* (same as last, *supra*) "do hereby further declare, that our true intent and meaning by the said writing was and is to release, and we do hereby more expressly release to the said proprietors, our right, claim, and pretensions to all and every, all the land lying within the bounds and limits of the government of Pennsylvania, beginning eastward on the Delaware river, as far northward as the said ridge, or chain of endless mountains, as they cross the country of Pennsylvania, from the eastward to the west. * *
* * We do hereby promise and engage, for our children and their children, that neither we nor they * * *
* will sell or grant to any person, other than to the said proprietors, the children of William Penn, * * *
any lands within the limits of the government of Pennsylvania, as 'tis bounded northward with the government of New York and Albany."*

The Commissioners of Pennsylvania were in attendance at the Great Council in Albany, in 1754. They made a purchase there, as follows:

ness, I shall heartily comply with. I beseech God to direct you in the way of righteousness and therein prosper you and your children after you.

I am your true Friend,

WM. PENN."

London, 8th of the Month called April, 1681.

Says Mr. Bancroft, *History of the United States*, Vol. II, p. 264: "Such were the pledges of the Quaker Sovereign on assuming the Government. It is the duty of history to state, that during his long reign, these pledges were redeemed. He never refused the free men of Pennsylvania a reasonable desire."

* On the 25th August, 1737, the walking purchase of 1696 was confirmed. The walk was made, and extended from Wrightsville to Mauch Chunk, but little over sixty miles—not much of a walk in these days. From there the line was run to the Delaware, at the mouth of the Lackawaxen, instead of at the Water Gap. This is what made the dissatisfaction, not the distance walked. This line terminated nearly at the Minniskunks. At the Council held in 1742, the Six Nations still insisted that by virtue of the deeds of 1736, the Proprietary right did not extend beyond the Kittchtinny (Blue) hills—they understood those hills to be "the limits of the government of Pennsylvania."

1754, July 6. DEED. *Thirty Chiefs of the Six Nations* to *Thomas and Richard Penn*, for all that territory, bounded as follows: "Beginning at the Kittocktinny or Blue Hills, on the west bank of the Susquehanna river, and thence by said river to a mile above the mouth of a certain creek called Kyanondinhigh, thence northwest as far as the said province extends to its western line or boundary, thence along said west line to the south line or bounds of said province, thence by the said south line or bounds to the south side of Kittocktinny hills, thence by the south side of the said hills to the place of beginning."

This land lies south and west of the lands conveyed to the Susquehanna Company, and covers a large portion of western and southwestern Pennsylvania.

The north west line in the above deed was altered to satisfy the Indians. See deed October 23, 1758, 2 Smith, Laws, 121.

1754, July 9. *Eight Chiefs of the Six Nations* to *Richard and Thomas Penn*, consideration 5 shillings (indorsed on deed of 1736,) "That neither we nor any by our authority shall sell, grant or convey to any other than the said Proprietors any lands within the limits of said Province."

1768, Nov. 5. DEED. *Six Nations* to *Richard and John Penn*: "All that part of the Province of Pennsylvania not heretofore purchased of the Indians." (See 2, Smith's Laws, 122.)

III.

THE POSSESSION OF THE PARTIES.

"The First Pennamite and Yankee War."

We are now to see what *possession* of the disputed territory was had by the parties under these various grants.

As early as 1637 the colonies in Connecticut had sent out settlers upon the Delaware Bay, under their claim as part of the Plymouth Grant. These settlers and their improvements were destroyed by the Dutch and Swedes, firmly planted on the Delaware, and in and about the Bay of New York, then called Manhattan, and up the Hudson River as far as Albany.

In 1670 John Winthrop took possession of the Minnisink country, on the Delaware river, and built a fort. He was, however, unable to hold it as against the Indians, and he abandoned it.

In 1755 surveyors were sent out under the Susquehanna Company to lay out their lands along the Lackawaxen and in the Wyoming valley.

As early as 1757 a settlement was made at Coshutunk, on the Delaware, which, in 1760, contained thirty houses, a block-house, saw and grist-mill.* The Indian and French wars, then raging, prevented any further prosecution of this work until 1762.† In

* Of the subsequent immigration to this region were the ancestors, paternal and maternal, of the late Chief Justice George W. Woodward and Justice W. J. Woodward, of the Supreme Court of Pennsylvania.

† The following "Extract" will throw some light on the condition of matters on the Delaware in 1762:

"May It please Your Honour

On Thursday about 9 o'clock at Night I received Your Honour's Orders by John Moor Esqr. to go up the River Delaware, & to use my best Endeavours to discover the Pretences and Intentions of the Connecticut People, who were then employed in cutting a Road from the upper Part of Minnisinks to Wyoming. Accordingly got ready on Friday & went to John McDowell's in Lower Smithfield Township, where I tarried all night. On Saturday employed myself to gain what Intelligence I could of the Inhabitants. How the people of that Township were affected, to wit, who were concerned with the Connecticut People in Lands? who were to supply them with Provisions? who were gone with them? and to take the Names of the Persons who were Purchasers in that Township, and found that Benjamin Shoemaker, Daniel Shoemaker, Samuel Dupue, Samuel Drakes, Joseph Wheeler, William Clark senr., Nichs. Dupue Junr., John McDowell, Hugh Pugh, Wm. Smith Senr., Joseph Hains, John Fish, Charles Holmes & James Lawson were the Persons that had purchased Rights; But that the Connecticut People were refused assistance by each of them, except Daniel Shoemaker, Joseph Wheeler, Charles Holmes, & James Lawson, they having gone with them to Wyoming, hearing at the same time, that the New England People were already got to Wyoming, was obliged to get a Person to go with me to help me on the Road, which was attended with some Difficulty, it being a busy time with the Farmers; I did however prevail on my Brother Garret to go with me, and agreed to pay him 7s 6 per day. And that night lodged at Samuel Dupue's. Early on Sunday morning went up the River, and when I came to Upper Smithfield Township, found the Inhabitants very close to the Interest of the Connecticut People, and that they seemed very anxious to know my opinion respecting or relating to the Claim of the Connecticut People But I never made any other

that year a number of the proprietors went upon the Susquehanna, took possession, and began clearing the ground. Late in the fall they deposited their farming utensils in the woods, returned home, and tarried during the winter. The next spring they renewed their possessions to the number of two hundred, and made a considerable settlement on the flats just below Wilkes-Barre. In October of 1763, this settlement was entirely exterminated by the Indians, and the crops destroyed. Two companies of the "Paxtang Rangers," Pennsylvania troops, arrived

reply than that I had heard the Indians Request of Sir William Johnson and His Honour our Governor, That if the white People came to settle on the lands at Wyoming, they should be removed, they then told me that the Connecticut People had lately sold a number of Rights to the Inhabitants at £48. each, and that they had given out that they were determined to hold the Lands by strong hands, and that night I staid at Andrew Dingman's, who informed me, that 4 men that had been with the New England People to Wyoming, were returned; That they told him, that when the Connecticut People came to Wyoming, the few Indians there (not exceeding 7 men) were very angry, and had met them with their Guns & Tomahawks (which was afterwards confirmed by the Indians themselves) & demanded to know their Business, their Women & Children having fled to the Woods, not knowing anything of the Approach of such a number of armed men into their Country. On Monday Morning set out early & lodged within 5 Miles of Lachawachsink Crk. On Tuesday as soon as we could see to travel, set out on our Journey, and that night Lodged within 30 miles of Wyoming.

DANIEL BRODHEAD.

27th Sept., 1762.

The Proprietaries had made some surveys in this region.

In 1748 they had laid out two Manors, one on the Wallenpaupack, (Wayne Co.,) of 12,150 acres, and one on the Lackawaxin, (Wayne Co.,) of 12,150 acres.

As early as 1754, Gov. Morris wrote to James Alexander: "I am heartily sorry to hear that the Connecticut people have so far prevailed as to corrupt some of Northampton people to join them. I believe more vigorous measures will be wanting to nip this affair in the bud than writing to Governors and Magistrates, or employing a few rangers, as I before proposed. I question if less will do than a superior number to the Connecticut men, women, and children that come, and bring them to Philadelphia, the women and children to ship to off to Gov. Fitch, the men to imprison till bailed or list for Ohio, this done twice or thrice will terrify others from coming. I doubt not Connecticut will amuse and give good words till a great number be settled and then bid defiance."

"THE REPORT OF THE SHERIFF AND JUSTICES OF NORTHAMPTON COUNTY.

"To the Honorable James Hamilton, Esquire, Lieutenant Governor and Commander in Chief of the Province of Pennsylvania:

"We, Aron Dupul, Lewis Klotz, John Moor, and Lewis Gordon, beg leave to Report to your Honour.

"That in obedience to your Honour's Command We having joined company at the House of Mr. Dupul, set out from thence on Wednesday the 8th Instant, on our Journey to Cushletunk where we arrived on Saturday following, and collected the following intelligence, viz: That the Government of Connecticut, by virtue of their original Charter from the Crown about six or seven years ago granted unto a great number of Persons, not less than eight or nine Hundred, who are called Proprietaries of a large Tract of Land in the Province of Pennsylvania."

"Who have accordingly laid out and surveyed the same, and at Cushletunk have erected three Townships, each of which is to extend in length on Delaware ten Miles and in breadth eight Miles. In the middle Township a large Town is laid out, consisting of eighty and odd Lots, two Hundred acres in each Lott, to each of which a Water Lott of ten Acres appertains: on the Lowlands are built three Logg Houses, one Saw Mill, one Grist Mill almost finished, and about thirty Cabblins for working people, their Number at present is about twenty men, besides women and children: about twenty more are gone home for want of provisions: But they are in full expectation to be joined by One Hundred Families at least, in the Spring: That it is strongly affirmed that every individual Member of the upper House, and Chief part of the lower House of Assembly of Connecticut are interested and concerned in the said purchase: the Governor has not yet thought proper to suffer his name to be made use of, but his Son, whose name is Fitch is one of the Proprietaries: That the lands are sold for 8 or 10 Dollars in hand for 200 Acres, twelve whereof to be cleared and improved and a House built in three years, otherwise to be forfeited."—15 Oct. 1760. Col. Rec., Vol. VIII, p. 564.

upon the ground two days after this massacre, and buried the victims, destroying what was left. (See History of Penn'a, by Dr. Egle, page 110.)

Up to 1768, I am not aware that any *settler* under Pennsylvania had set foot in the disputed territory.* In 1768, as we have seen, the Penns had completed their purchase of these lands at Fort Stanwix. The General Council, held then, had made treaties which promised relief from Indian troubles. We have now come to the miserable contest, known in the common parlance of the country as "the First Pennamite and Yankee war."

It was a fair, and beautiful, and valuable prize, this valley of Wyoming, and all the valley of the upper Susquehanna. Both sides prepared for the fray.

In 1768, at Hartford, the Susquehanna Company resolved "that five townships, five miles square, should be surveyed and granted, each to forty settlers, being proprietors, on condition that those settlers should remain upon the ground; man their rights;† and defend themselves, and each other, from the intrusion of all rival claimants." Five townships in the heart of the valley were assigned to these first adventurers: Wilkes-Barre, Hanover, Kingston, Plymouth, and Pittston. Kingston, the first township occupied, was allotted to "Forty" settlers. The lands were divided into rights of four hundred acres each, "reserving and apportioning three whole rights, or shares, in each township, for the public use of a gospel ministry, and schools, in each of said towns." A stockade was erected on the river bank in Kingston, called "Forty Fort." It became the central point of much of the history of the region. With these settlers came Captains Butler, Ransom, and Durkee, some of whom had seen honorable service in the French war, and had shared in the campaign at Ticonderoga and Crown Point. They were not without the aid of bold adherents obtained in Pennsylvania—the Shoemakers and McDowells from the settlements on the Delaware, above the Blue Hills; and Lazarus Stewart, and others, from Hanover, in Lancaster, now Dauphin county, re-inforced by some excellent Quakers from Rhode Island.

* By "disputed territory" here, I mean the Wyoming Valley. In a larger sense the *disputed territory* was all that part of Pennsylvania north of the 41°. Within these limits many Pennsylvania *settlers* must then have been: up the West Branch to Muncy, in the Buffalo Valley, Bald Eagle Valley, on the Delaware, and on the upper North Branch of the Susquehanna.

† In Union county, (then Northumberland,) deeds for 1772, contain Penn's warranty "against the claim of the inhabitants of New England."

The designated leaders of the Proprietaries of Pennsylvania were Charles Stewart, Captain Amos Ogden, and sheriff Jennings, of Northampton county. They had able assistants in Captains Clayton, Francis, and Craig.

The Penns had *leased* to Stewart, Ogden, and Jennings, one hundred acres for *seven* years, on condition of "defending the lands from the Connecticut claimants." This lease was the flag they hoisted as the badge of title and possession. They arrived first upon the ground. This was in January, 1769. They took possession of the block-house and huts at Mill Creek, (about one mile above the present city of Wilkes-Barre,) which had been left by the massacred settlers of 1763. They laid out for the Proprietaries two extensive manors: "Stoke," on the east bank, and "Sunbury" on the west bank of the Susquehanna, embracing the heart of the Wyoming valley.

In February, of 1769, the first forty Connecticut settlers arrived. Finding the block-house in possession of Ogden, they sat down, mid-winter as it was, to besiege it and starve out the garrison. Ogden proposed a conference. "Propose to a Yankee to talk over a matter especially which he has studied and believes to be right, and you touch the most susceptible chord which vibrates in his heart." It was so here. Three of their chief men went to the block-house to "argue the matter." Once within, sheriff Jennings arrested them on a writ "in the name of Pennsylvania." They were taken to the jail at Easton. Friends there bailed them, and they returned to Wyoming. Ogden then raised the *posse* of Northampton county, stormed the Yankee fort, and carried the whole forty to Easton. They were all immediately liberated, on bail, and all immediately returned to Wyoming.

In April, the quotas of four townships, two hundred men, arrived. These, with the others, constituted a force of nearly three hundred now on the ground. They erected "Fort Durkee," on the river bank, and thirty huts. (The fort stood at the lower end of the "river common," in Wilkes-Barre, the town itself being laid out by Major Durkee, and named after Colonels Wilkes and Barre, two members of Parliament, friendly to the colonies.) They had full possession now, and went vigorously at felling forests and planting fields. As the colony of Connecticut was as yet taking no part in this struggle, the Susquehanna Company undertook to gain time and get delay by opening

negotiations with the government of Pennsylvania. Pennsylvania listened, but kept right on with the more rigorous preparations to recover the disputed ground.*

In September, the indefatigable Ogden appeared before Fort Durkee with two hundred men, the *posse* of Northampton, for so far all was done under civil process. A four pound iron cannon had been brought up from Fort Augusta, (Sunbury.) Captain Durkee was captured by the adroit Ogden, and under the persuasion of the dreadful four pounder, the whole garrison surrendered, and the Connecticut people were compelled to leave. This closed the year 1769, Wyoming remaining in possession of Pennsylvania.

Ogden believing he had made thorough work, disbanded his troops, and leaving a small garrison in his fort at Mill Creek, went to Philadelphia to enjoy his honors. In February, Captain Lazarus Stewart,† of Hanover, Lancaster county, and his "forty" settlers, (mostly Pennsylvanians these, who had purchased the township which he named for his own home, Hanover,) appeared in the valley. They ousted Ogden's men from his fort, and captured the "four-pounder." This brought Ogden rapidly back from Philadelphia with fifty men, and he re-possessed his Mill Creek fortress. In a sally made upon him here, the Connecticut people were repulsed, and lost one man, killed—the first blood shed as yet. Ogden was obliged to surrender in April, and retired from the valley.

Planting time had come, peace reigned, and confidence began to prevail. Spring and summer came, and the harvests were ripening, and no foe.

Pennsylvania, for some reason, had not crushed this dispute. In point of fact, the Proprietaries having appropriated the best part of the valley to themselves, the people very generally sympathized with the *settlers*, and wished them success. However, with a new force, Ogden appeared once more in September, and by stratagem, most of the inhabitants being in their fields, with-

* See correspondence, Penn's Arch., Vol. IV, pp. 401-2.

† Capt. Lazarus Stewart deserves larger mention than a mere foot note. He came of Scotch Irish stock, from Lancaster county. He was a remarkable man, bold, humane, and true; and to his presence on many critical occasions the Yankees owe their continued presence in Wyoming. He fell at the massacre, at the head of his company.

‡ The *Annals of Luzerne*, are written by his kinsman, Honorable Stewart Pearce, of Wilkes-Barre. It is a model of local history in its compilation of facts, arrangement, completeness, and impartial deductions. Mr. Pearce is a descendant of the Dixons and Jamisons, the first members of the Susquehanna Company's enterprise from Windham county, Connecticut.

out arms, once more captured the fort, dispersed the settlers, and destroyed their crops. For the fourth time he retired to Philadelphia, in the full belief that the contest was at an end. At the very close of the year, on the 18th of December, Captain Lazarus Stewart, with thirty men, again swooped down upon Ogden's garrison, and the year closed with the valley in the possession of the Yankees.

Promptly, with the opening of 1771, Pennsylvania again sent her forces to the re-capture of Fort Durkee, and the fields of Wyoming. Captain Ogden abandoned his fortress at Mill Creek, and defiantly erected a new one—Fort Wyoming, within sixty rods of his adversary. Captain Stewart commanded at Fort Durkee. It was Greek against Greek now. Ogden demanded the surrender of Fort Durkee. Stewart replied: "That he had taken possession, in the name and behalf of the colony of Connecticut, in whose jurisdiction they were, and by that authority he would defend it." Ogden assaulted, but failed, a number being killed and wounded in this affair. In turn he was besieged. Escaping himself by a ruse, his garrison surrendered under formal articles of capitulation on the 14th of August, 1771.

The government of Pennsylvania, finding that the Connecticut forces had strongly fortified themselves—that their numbers were rapidly increasing, and believing, from the boldness and confidence of the intruding Yankees, that the government of Connecticut were sustaining them, gave orders for the withdrawing of their troops, and left the Connecticut party in quiet possession of the valley.

In answer to a letter from Mr. Hamilton, President of Council, to Governor Trumbull, of Connecticut, inquiring under whose authority "these violent and hostile measures" were prosecuted, Governor Trumbull thus cautiously replies, October 14, 1771:

"The persons concerned in those transactions have no order and direction from me, or from the General Assembly of the colony, for their proceeding upon this occasion, and I am very confident that the General Assembly, friends as they ever have been to peace and good order, will never countenance any violent, much less hostile, measures in vindicating the rights which the Susquehanna Company suppose they have to *lands in that part of the country within the limits of the charter of this colony.*"

Connecticut had not yet "asserted its title" to this country. The inhabitants of Wyoming established a government for themselves. They laid out townships, formed settlements, erected

tortifications, levied and collected taxes, passed laws for the direction of civil suits, and for the punishment of crimes, established a militia, and provided for the common defense and general welfare of the "plantation." "Neither the Grecian nor Roman States, in their proudest days of republicanism, could boast of a government more purely democratic than was now established at Wyoming."

For the two years 1772-1773 peace reigned and prosperity. The "settlers" showed themselves competent to defend themselves, and their footing seemed securely established. In October, 1773, the General Assembly of Connecticut "*Resolved*, That this Assembly, at this time, will assert and, in some proper way, support their claim to those lands contained within the limits and boundaries of their charter, which are westward of the Province of New York."

Commissioners were appointed, who went to Philadelphia, in December, to bring the controversy to an amicable conclusion. The case was there fully gone over on both sides; but the negotiation failed of results. It was conducted with the most stately courtesy and ability.* A strong Pennsylvania advocate says of his adversary: "I should have been glad to have seen the excellent temper and abilities of their penman engaged in another cause."

In January, 1774, an act was passed by the General Assembly of Connecticut, erecting all the territory within her charter limits, from the river Delaware to a line fifteen miles west of the Susquehanna, into a town, with all the corporate power of other towns in the colony, to be called *Westmoreland*, attaching it to the county of Litchfield." As might have been expected, this greatly strengthened the settlers, and was hailed with much satisfaction. They were now under the law and protection of the ancient and high-standing Colony of Connecticut. "A sense of security existed, a feeling of confidence ensued, which gave force to contracts, encouraged industry, and stimulated enterprise."

The Wyoming region was in Northampton county, until the year 1772, when it went into Northumberland, according to the municipal division of Pennsylvania.

On July 3-7, 1772, Colonel Plunkett, of Northumberland county, under orders of the Government, destroyed the settle-

* These negotiations can be found in Col. Rec., Vol. X, pp. 111, 118-123, 163.

ments of Charleston and Judea, (Milton,) on the West Branch, which had been made under the auspices of the Susquehanna Company, in which affair some lives were lost. With about five hundred armed men, in December, 1775, Colonel Plunkett, with his train of boats and stores of ammunition, moved up the North Branch to drive off the Connecticut settlers from the Wyoming country. About three hundred of these settlers met him at Nanticoke, and repulsed him, with some loss of life on both sides. At this point, Congress interfered, and "Resolved * * * that the contending parties immediately cease all hostilities, and avoid any appearance of force, until the dispute can be legally settled." It is evident that the dispute had widened into national importance. After Colonel Plunkett's failure, all "appearance of force" did cease until after the decree of Trenton, in 1782.

In 1775, the number of inhabitants at Wyoming was something more than three thousand.

In November, 1776, the town of Westmoreland was erected into a county of Connecticut, to be called Westmoreland, and thereupon its civil and military organization was complete.

Three companies of troops were raised there for the Continental establishment, and were part of the Twenty-fourth regiment of the Connecticut line.

No event of any significance in our discussion occurred until after the close of the revolutionary war, except the sweeping disaster—the massacre on 3d July, 1778. I cannot agree that it grew out of our controversy, although some responsible names have broached the theory that it was instigated by Pennsylvania claimants. The theory is founded on Patterson's petition to the Legislature in 1804. I believe "*the facts*" therein set forth are *not true*.*

* I will quote from Captain Alexander Patterson's petition to the Legislature of Pennsylvania, in 1804:

"In the year 1776, there were a number of inhabitants, settlers on the north-east branch of the Susquehanna, near Wyalusing, under the Pennsylvania title. Amongst these were two brothers named Pawling, of a respectable family, from the county of Montgomery. They had paid one thousand pounds, in gold and silver, for their farm at Wyalusing, unto Job Gillaway, a useful, well-informed Indian, who had obtained a grant for said land from the late proprietors of this State. Among the settlers were Messrs. Secord, Depew, Vanderlip, and many others, wealthy farmers. The Yankees at Wyoming being more numerous, and though at the distance of sixty miles, insisted that the Pennsylvania settlers should come to Wyoming, and train and associate under Yankee officers of their own appointment. As may be supposed, the proposals were very obnoxious to the inhabitants of Pennsylvania, and very properly refused, alleging they would associate by themselves, and would not be commanded by intruders, who had so repeatedly sacked the well disposed inhabitants of Pennsylvania, and at that time bid defiance to its laws and jurisdiction. This gave a pretext to the Yankees for calling them Tories. They therefore went in force and tied the Pennsylvania settlers,

I prefer to rest it where the chaste and beautiful inscription on the tablet of the monument erected to the memory of the three hundred slain at Wyoming rests it:

"Near this spot was fought
on the afternoon of Friday, the third day of July, 1778,
THE BATTLE OF WYOMING.

In which a small band of patriot Americans, chiefly the
undisciplined, the youthful and the aged spared by in-
efficiency from the distant ranks of the Republic, led
by Col. Zebulon Butler and Col. Nathan Denison,
with a courage that deserved success,
boldly met and bravely fought
a combined British Tory and Indian force
of thrice their number.

Numerical superiority alone gave success to the invader
and wide-spread havoc, desolation and ruin

and brought them to Wyoming, with all their moveables, and confined them in a log house, until the Indians, who lived in the neighborhood of Wyalusing, and loved the Pennsylvanians, and at that time were well affected to the United States, some of whom had joined our army.

"These Indians came to Wyoming, and requested that the Pennsylvania people should be released from confinement. After some altercation, and the Indians declaring they would complain to Congress, they were released, and on their return, without property, were ambushed and fired upon by the Yankees. The event of all this was that the Pennsylvania people were so harassed by the intruders, that they were driven to seek an asylum with the Indians, and at length retired to Niagara for protection. It was well known, at the time, on the frontiers of Northumberland and Northampton counties, that the conduct of these Yankees occasioned the secession of the Five Nations from the United States.

"As was natural to imagine, those Pennsylvania settlers who had been so cruelly robbed of their property would endeavor to regain it. *Their address and moving complaints induced Joseph Brandt, a well known Indian chief, and a Colonel Butler, Superintendent of Indian Affairs, to come with them to Wyoming, with a number of Indians, for the recovery of their property, goods, and chattels.*

"The party arrived at a place called Abraham's Plains, about five miles above Wyoming. The Yankees were apprised of their being at that place, and must needs go and fight them, led on by the old murderer, Lazarus Stewart, first having drank two barrels of whiskey to stimulate their spirits. They marched in riot, with drums beating and colors flying. The result was that a number of them was killed. Those who asked quarter were humanely treated, nor was a woman or child molested, only enjoined to leave the country to the rightful owners. Surely there was no propriety in calling that transaction a massacre or murder. The wretches brought it upon themselves, and so be it."

In another petition, presented by Patterson to the Pennsylvania Legislature, August 27, 1784, he says:

"The Connecticut settlers continued to harass and distress all those who had the honesty to declare they held their lands under this State, with vexatious suits, and fines insupportable, until many of the unhappy sufferers, cut off from every support from this State, grew desperate, joined the savages, and in revenge deluged Abraham's Plains with blood."

Benjamin Pawling, in a letter dated at Niagara, in 1784, to Edward Bartholomew, at Philadelphia, states that the Pennsylvania claimants were the people that cut off the Connecticut settlers at Wyoming.

I will call one more witness—Colonel Guy Johnson to Lord George Germain. New York, 10th September, 1778.

No. 9.—Extract.

"* * * * * Your Lordship will have learned, before this can reach you, of the successful incursions of the Indians and Loyalists from the northward. In conformity to the instructions I conveyed to my officers, they assembled their forces early in May, and one division, under one of my deputies, (Mr. Butler,) proceeded with great success down the Susquehanna, destroying the posts and settlements at Wyoming, augmenting their numbers with many loyalists, and alarming all the country; whilst another division, under Mr. Brandt, the Indian chief, cut off two hundred and ninety-four men near Schoharie, and destroyed the adjacent settlements, with several magazines, from whence the rebels had derived great resources, thereby affording encouragement and opportunity to many friends of government to join them." * * * *

marked his savage and bloody footsteps through the valley
 THIS MONUMENT
 commemorative of these events
 and of the actors in them
 has been erected
 over the bones of the slain
 by their decendants and others who gratefully appreciated
 the services and sacrifices of their patriot ancestors." *

We have now gone over "the possession" taken by these "settlers"—have gone over the main "facts on the ground."† They may be summarized thus:

The organization of the Susquehanna Company in 1753—their purchase of the Indians in 1754—their petition to His Majesty to be erected into a new colony—the resolve of the Colony of Connecticut in 1755, "that they manifest their ready acquiescence therein"—preliminary surveys in 1755—settlement on Delaware, 1757—settlement on Susquehanna in 1762—continued in 1763, and their destruction in October of that year—that in 1769 they returned, and that thereafter, while the settlements were interrupted, they were never discontinued.

In January, 1774, the settlers were incorporated into a town by the name of Westmoreland, and annexed to the county of Litchfield. In May, 1776, it was by statute erected into a county, with the same powers, privileges, and regulations as the other counties in Connecticut. From this time a complete civil and military establishment took place and continued until the decree of Trenton, in December, 1782. That the troops raised in this territory were part of the Connecticut line, and as such recognized by Congress. That the whole settlement stood then as a guard and protection of the frontier. Representatives attended the Legislature. Courts were constituted and tried all causes, real and personal, civil and criminal, and carried their judgments into effect. Executions were extended upon land. Judges of Probate held cognizance of testamentary matters. Records were regularly kept. Offenders against the laws of Connecticut were indicted, tried, convicted, and punished. All grades of officers, civil and military, were appointed, and exercised the various functions of their offices.

That all these incidents gave the actual settlers "color of title:"

* Written by Edward G. Mallery, son of Judge Mallery, of Philadelphia.

† The principal events of this period will be found in Col. Recs., Vol. IX. Pa. Arch. Vol. IV.

whether that title was otherwise perfect or not, they were *actual settlers* and *improvers*.

That, *per contra*, the Pennsylvania claimants were not there as *bona fide* settlers and improvers, but as a *posse*, or in military capacity.

It is not believed that the Proprietaries created any *bona fide* titles to individuals here before 1771. There may have been*

*The following list is furnished me from the records of your own Historical Society:

"A LIST OF THE NAMES OF THE PURCHASERS OF THE LANDS IN THE MANORS OF STOKE AND SUNBURY, AT WYOMING, THE 13TH DAY OF APRIL, 1771.

"MANOR OF SUNDBURY.

	PERSONS NAMES.	a.	p.	
"1	Cornellus Vancampen,	79		
2	William Ladlie,	79		
3	Garret Brodhead,	79		
4	Nicholas Dupui,	79		
5	Daniel Shoemaker,	81	23	
6	Ditto,	79		
7	John Vancampen,	79		
8	John Orrison,	79		
9	Beniah Munday,	79		
10	John Smith,	79		
11	Robert Duchee,	79		
	N. B.—As much Woodland is to be surveyed and added to the above eleven Lowland Lots as will make up the Quantity of 150 Acres to each Person.			
12	Joseph Wheeler,	116	50	
11	Robert Duchee,	81	100	
13	Aaron Dupui,	123		
14	Samuel Cannan,	156		
15	Amos for Nathan Ogden,	168	60	
16	David Ogden,	175	80	
17	Charles Stewart,	175	80	
18	Phillip Johnson,	170		
19	Samuel Rogers,	161		
20	Thomas Vanhorn, Esquire,	202		
21	Cornellus Vanhorn,	188	80	
22	James Lawson,	172		
23	John Dolson,	150	120	
24	William Armstrong,	85		
25	Bernard Kroltz,	150		
26	David Fowler,	160		
27	George Field,	177	80	"

"MANOR OF STOKE.

	PERSONS NAMES.	a.	p.	
"28	Mill Seat,	181		
29	Robert Martin,	86		
30	Alexander Patterson,	100		
31	Doc'r Andrew Ladlie,	128		
32	Joseph Morris, Assignee of Jno. Jennings,	147		
33	John Dick, Assignee of Isalah Jennings,	142		
34	George Ryerson,	134	120	
35	Martin Ryerson,	130	56	
36	David Johnson,	127	50	
37	Samuel Johnson, Jun'r,	122	80	
38	James Johnson,	119	100	

holders of these titles, *improvers*, but if so, they lived in a Connecticut *community*, and had been governed by Connecticut law, under Connecticut jurisdiction. Ogden was an Indian trader from New Jersey.

PERSONS NAMES.		a.	p.
39	Gilbert Ogden,	117	112
40	John King, Assignee of D. Leet,	117	24
41	Richard Manning,	119	12
42	Luke Brodhead,	122	140
43	Thomas Craig,	127	98
44	Stias Crane,	131	116
45	John Collins,	134	76
46	Jesse Clark,	118	120
47	John Salmon,	212	
48	Aaron Dupul,	96	
49	Michael Roup,	144	
50	Lawrence Ramee,	127	
51	John Murphy,	82	138
52	Robert Martin,		
53	Peter Kachlein,	180	

I quote Timothy Pickering, in 1790, *Italics and all*, as pertinent to the same list :

"Mr. Sitgreaves told you that in passing that law, (to use his own extraordinary words, that 'unnecessary'—that 'disgraceful'—that 'infamous' law,) the Legislature had *wantonly sacrificed* the *property*, not merely of a few *gentlemen*, but of the *yeomanry* of Pennsylvania, to bestow it on *lawless intruders*! and that this *yeomanry* had since been suffering and starving for the want of that very property! By *yeomanry*, I presume he meant the *farmers* to whom the Wyoming lands had been granted, immediately, or mediately, by the Proprietaries. Now if the committee will take the trouble of opening the paper I left with them, exhibiting an extract from *some* of Govr. John Penn's grants to the *yeomanry* in April, 1771, they will see a list of twenty-nine persons (part of them I suspect and perhaps a considerable part, were *Jersey adventurers*) to whom grants of *thirty-one* lots were made on the terms therein mentioned; and that one essential condition of those grants was, that the grantees should each 'keep, at his own *expense*, one able-bodied man, at least, *constantly* upon his lot, for the improvement and *defence* of the same.' I need not observe, that if this condition had been complied with by all the grantees—if this important *yeomanry* had *really defended* that country—the committee would not now be *troubled* with this *very troublesome business*. The truth is, that the grantees did not perform that necessary condition, nor have those named in the above mentioned list performed another of *some consequence*. I mean that of *paying* for the lands so granted; and consequently the grants are now void, and the lands revert to the proprietaries. Of the twenty-nine grantees named in that list, it appears at the Receiver General's office, that *one only* (Charles Stewart) has paid a farthing. *He did pay*; but it is equally true that he has not *kept possession and defended*. The Receiver General looked for the names of Philip Johnson, Robert Martin, Alexander Patterson, Andrew Ledlie, David Johnson, James Johnson, Amos Ogden, for three other Ogdens, John Vancamper, and Garrett Brodhead; and finding that neither of these had paid anything, he concluded the others were alike delinquent.

IV.

SOME OBJECTIONS TO THESE CHARTERS AND DEEDS.

We are now in a situation to glance at the arguments in support of and the objections to these various grants. We can do no more than merely state them, to show the learning and ingenuity with which this legal warfare was waged upon the one side and the other in this great lawsuit.

The main controversy has been over the location of the grants, especially those to Lord Say and Seal, and the derived charter to John Winthrop. I omit the various constructions put upon the limits of these grants, as each one can well make them for himself.*

It was objected :

I. That in the time of Charles I the geography of this country was little understood, and the breadth of the continent unknown, and that the King was mistaken and deceived when he used such general words in these several charters, as, if literally construed, would convey an extent of three thousand miles.

Answered :

That the King does not appear to have been dissatisfied with the Connecticut charter, or with any of the earlier charters, all of which had extension westward to the South Sea, (as the Pacific Ocean was then called :)

That *scire facias* or some mode of proper inquest would be necessary to establish deception or fraud :

That, in fact, the Crown was not ignorant of the extent of this continent :

That as early as 1589, Sir Francis Drake had completed his circumnavigation of the globe; had explored the coast of California, or Nova-Albion, as he called it; had taken possession of the country there in behalf of his Queen, and erected pillars as a memorial of British dominion, full accounts of which were early published in Europe :

That in 1635, when the great Plymouth Council made a final resignation of their grant, they acquaint his Majesty with the extent of New England territory, saying therein : "*Our grant from east to west, through all the main land, from sea to sea, being near about three thousand miles in length :*"

*The location of the Connecticut charter by Doctor William Smith, of Philadelphia, deserves notice. He proceeds on the general theory that the colonial grants were based on the Atlantic water front, and extended perpendicularly to the interior. He bases this charter on a line extending a little south of west from Point Judith to Greenwich. He then lays the grant on this, running back a little west of north to the "South Sea," which he intimates may be Lake Champlain.

It is against this construction of the lines, however, that the grant would immediately intersect Massachusetts, and lie over it, an "interference" which it is not to be supposed grantors and grantees, alike familiar with the case, would have intended.

That the grants were made to cover the breadth of the continent, from motives of deep policy, to forestall other nations:

That about 1752, the British nation set them up against the French. Upon a proposal to settle their controversies, it was agreed, as a preliminary, that each Crown was "to hold the lands most anciently granted to its subjects." That when the English commissioners produced the grants to Plymouth Council, Massachusetts Bay, and the Colony of Connecticut, much earlier than any grants by the French King, the French commissioners say, "you claim all the country; there is no settlement to make:"

That these limits have since been often solemnly recognized:

At the great Council* of the Colonies and Indian tribes, convened at Albany, in 1754, at the recommendation of the Crown, to head off French encroachments, Pennsylvania being represented by John Penn, Isaac Norris, Richard Peters, and Benjamin Franklin, it was, among other things, resolved, that under "this grant," (the charters of 1606 and 1620,) "the colony of Virginia claims extent *as far west as the South Sea*, and the ancient colonies of the Massachusetts bay and Connecticut were, by their *respective charters*, made to extend to the said South Sea :"

And this resolution, (the effect of which I have nowhere seen commented upon,) "that the bounds of those colonies which extend to the South Sea be contracted and limited by the Allegheny or Apalachian Mountains:

[This is about the limit westward of the Indian deed to the Susquehanna Company.]

That by the treaty of Paris, 10 February, 1763, between Great Britain, France, and Spain, "the confines of the dominions of his Brittanic Majesty were limited by the Mississippi river on the west," which arose from these extended charter bounds:

That at the treaty of peace between the United States and Great Britain, 3d of September, 1783, the Colonial limits were insisted on by the United States and yielded by Great Britain:

That in 1786, the Congress of the United States accepted from Connecticut an unconditional cession of their territory westward of Pennsylvania, allowing the State of Connecticut to except out of their conveyance a large extent of it, called "the Western Reserve," in Ohio:

That it had always been understood that, at least west of Pennsylvania, Virginia and Connecticut met on the 40° of latitude.

II. It was insisted that by the settlements, first between the Dutch, and afterwards between the Duke of York and the Colony,

* This Council also resolved, that "if the Indians are not, in fact, imposed on and injured, yet they are apt to think that they have been; and, indeed, they appear not fit to be entrusted at large, with the sale of their own lands."

"That the granting or patenting vast tracts of lands to private persons or companies, without conditions of speedy settlement, has tended to prevent the strengthening the frontiers of the particular colony where such tracts lie, and been prejudicial to the rest."—*VI Colonial Records*, 104.

the western bounds of the Colony of Connecticut were limited by the eastern bounds of New York. It has been said that "the Connecticut claim here received a death blow."

In short, the facts are these: In 1650, the Dutch, having settlements on the lower Delaware and on the Hudson, claimed eastward to the Connecticut river. They then came to an understanding with the New Haven Colony, (before the date of the Connecticut charter,) in which it was agreed that "the bounds upon the main shall begin at the west side of Greenwich bay, being about four miles from Stamford, and so to return a northerly line twenty miles up into the country, and after as it shall be agreed by the two governments of the said Dutch and New Haven, provided the said line come not within ten miles of Hudson's river." The English Government never gave their consent to this agreement.

In 1664, King Charles granted to his brother James, the Duke of York, a great extent of country about St. Croix, Long Island, and "all the land from the west side of Connecticut river to the east side of Delaware bay." The latter was intended to include all the Dutch claims in the main land which had been excepted out of the Plymouth charter, as in the actual possession of another Christian prince or state. Colonel Nichols, in the name of the Duke of York, dispossessed the Dutch in August, 1664. In that year, the commissioners ordered "that the creek or river called Mamaroneck, which is reputed to be about twelve miles to the east of West Chester, and a line drawn to the east point or side, where the fresh water falls into the salt, at high water mark, north northwest to the line of Massachusetts, *be the western bounds of the Colony of Connecticut*, and all the plantations lying westward of that creek, and a line so drawn shall *be under his royal highness' government*, and all the plantations lying eastward of that creek and line *to be under the government of Connecticut*." Governor Winthrop of Connecticut and his commissioners assented: "We underwritten, on the behalf the Colony of Connecticut, have assented unto this determination of his majesties commissioners, in relation to the *bounds and limits of his royal highness the Duke's patent and the patent of Connecticut*."

It has been considered that having a prince of the royal blood, the King's brother, and the presumptive heir to the crown, to contend with, Governor Winthrop deemed it best to get as early and favorable settlement as possible.

[It will be observed that it is the *political jurisdiction* which is here settled, not the *private right of soil*. The title of the "settlers" was not disturbed.]

The line thus indicated, crossing the Hudson before it reached Massachusetts, the Duke of York refused to be bound by this award.

In 1674 the Duke of York received a new grant, the Dutch having, meantime, recaptured their possessions.

In 1683 a new line was settled, being the present line between the State of New York and Connecticut, which, in 1700, was by the King "made absolute and conclusive as to the parties concerned." The line was not actually run, and the business concluded until 1731.

Out of this has grown no end of discussion as to the power of the King to revoke or annul a grant, as to the powers of Colonel Nichols and the commissioners, and as to the exact force and meaning of the final agreement of the parties. They embrace official papers too voluminous to be set forth here. Eminent lawyers were consulted. Their opinions will give the state of the case.

In behalf of the Province of Pennsylvania, we have the opinion of Mr. Pratt, Attorney General, afterwards Lord Camden, dated March 7, 1761, to whom Mr. Penn submitted his case:

"If all the colonies in North America were to remain at this day, bounded in point of right, as they are described in the original grants of each, I do not believe there is one settlement in that part of the globe that has not in some measure either been encroached upon, or else usurped upon its neighbors: so that if the grants were themselves the only rule between the contending plantations, there never could be an end of their disputes without unsettling large tracts of land, when the inhabitants have no better title to produce, than either possession, or posterior grants, which, in point of law, would be superseded by prior charters. Hence I conceive that many other circumstances must be taken into consideration, besides the *parchment boundary*: for that may at this day be extended or narrowed by *possession, acquiescence, or agreement: by the situation and condition of the territory* at the time of the grant, as well as by various other matters.

"With respect to the present dispute, *the western boundary of Connecticut was barred at the time of the original grant by the Dutch settlement*: and the Crown were deceived when they were called upon to convey a territory which belonged to another State then in amity with the Crown of England. Besides this objection, the settlement of the new boundary, under the King's commission, in 1664, and what is still stronger, the new line marked out by *agreement* between this province and New York, *has now precluded Connecticut from advancing one foot beyond these limits.*

"* * * "I am of the opinion, therefore, that the Province of Connecticut has no right to *resume their ancient boundary* by overleaping the Provinces of New York: or to encroach upon the Pennsylvania grant, which was not made till after the Connecticut boundary had been reduced by new confines, which restored the lands beyond those settlements westward, to the Crown, and laid them open to a new grant. The State of the country in dispute is a material *State reason* why the Crown ought to interpose in the present case, and put a stop to the growing mischief. But I doubt this business cannot be adjusted very soon, because Mr. Penn must apply to the Crown for relief, which method of proceeding will necessarily take up time as the Province of Connecticut must have notice, and be heard."

will be found that ultimately the case went off on "State

reasons," as suggested by the Attorney General. It may be worth while to observe that Mr. Pratt agrees that the charter did, in the original, extend to the "South Sea." An able Connecticut advocate has parried the main force of Lord Camden's opinion by suggesting: "Could this determination be pleaded in bar against the claim of the Duke to the tract of country at *Saint Croix*, or *Nantucket*, or *Martha's Vineyard*, which was granted to him by his charter, *because that tract is situated 'eastward' of the line here specified?* If not, then neither can the expression 'western bounds of the colony of Connecticut' be a bar to the claim of Connecticut to land lying *west of the Duke's patent*, and covered by their charter. The whole determination must be interpreted in the same limited or unlimited sense."

The Connecticut people likewise submitted their case to eminent crown lawyers—Lord Thurlow, Mr. Wedderburn, (afterwards Lord Lowborough,) Chancellor Dunning, and Mr. Jackson. The questions and answers were as follows:

"*Question I.* Do the words *actually possessed and occupied* extend to lands on the west side of the *Dutch settlements* which were at the time of the grant of James the first, in a perfect wilderness state, but divided from the *English settlements* by the actual possession of the Dutch? And did the grant to the Council of Plymouth mean to except in favor of foreigners, not only what they had actually planted, but all to the westward of such plantation?"

"*Answer.* We are of opinion that the words *actually possessed and occupied*, do not extend to lands on the west side of the *Dutch Settlements*, which was, at the time of the grant of James I, in a wilderness state, though divided from the English settlements by the actual possession of the Dutch. And that the grant to the Council of Plymouth did not mean to except in favor of any one anything to the westward of such plantations.

"*Question II.* Have not the said Governor and Company of the Colony of Connecticut, the right of preëmption and the title under the Crown to the lands aforesaid, within the limits and bounds of their patent aforesaid, lying westward of the Province of New York, and not included in the charter of King Charles II to the Duke of York, notwithstanding the several settlements of boundaries between the colony on the east and the province on the west, made as well by agreement between the parties as under the royal authority, and notwithstanding the subsequent charter to Sir William Penn?"

"*Answer.* The agreement between the Colony of Connecticut and the Province of New York can extend no further than to settle the boundaries between the respective parties, and has no effect upon other claims that either of them had in other parts: and as the charter to Connecticut was granted but eighteen years before that to Sir William Penn, there is no ground to contend that the Crown could, at that period, make an effectual grant to him of that country, which had been so recently granted to others. But if the country had been actually settled under the latter grant, it would now be a matter of considerable doubt whether the right of the occupiers or the title under which they hold, could be impeached by a prior grant, without actual settlement."

Objecting to these *answers*, the Pennsylvania advocate naturally objected to the *questions* — "that the main point in dispute is here still taken for granted" — a criticism which, it must be confessed, looks valid.

These facts and opinions will give sufficient insight into this branch of the dispute.

III. That it was not the understanding, as appears from the state of the colony when the charter was granted, that the boundaries of Connecticut extended westward far beyond the Connecticut river.

"New Haven Colony" either was not included in the charter, or, if included, came in reluctantly. Many letters passed between the authorities of the two Colonies. "New Haven," in 1665, seems to have, "in loving treaty," "accommodated matters." In the course of the correspondence, "Connecticut," in a letter to "New Haven," 21st Dec., 1664, uses this language: "Our too much forwardness with New Haven, &c., is not so clear. *Seeing those plantations you inhabit are much about the center of our patent, which our charter limits,*" * * * * and expresses their willingness "to confer on you, equal with ourselves," choice privileges "which we wish may, at least, produce the long desired effect, of your free and cordial closure with us, not attributing any necessity imposed on us, further than the situation of those plantations in the heart of our colony," &c.

This view of the very men who procured the charter, and within two years of its date, is only attempted to be answered by a query: "Allowing that the writers of the letter from Connecticut were ignorant of the true extent of the charter, and really meant that *New Haven plantations were about the center of the territory conveyed by the patent*, can this be construed in law or reason as a surrender or forfeiture of their right to the lands most amply granted under the broad seal? Can the most express and ample conveyance be rendered null and void by an accidental stroke or two in a "cursory letter?"

IV. That Connecticut, on several occasions, has waived or, by admissions, estopped herself from asserting her title to lands west of New York.

1. That in answer to circular questions, as directed to the colonies by the "Board of Plantations and Trade," Governor Talbot, in 1730, says thus to the question:

"What are your bounds?"

Ans. "The *reputed and known boundaries* are Massachusetts on the north, Rhode Island colony on the east, Long Island on the south, and *New York Province on the west.*"

"What are your rivers?"

Ans. "Between the Narragansett river, our eastern bounds and *Mamaronck* rivulet, our western bounds, are these rivers, the river Connecticut, the Pequot river, and the river "at Stratford."

The objector assumes that they surely knew of the Delaware, Susquehanna, and Allegheny, and would have mentioned them had they not thought their western bounds not fixed by the limits mentioned.

2. That in 1761, Governor Fitch answered like questions in like manner.

3. That Connecticut, in forming the county of Litchfield, about 1750, called it "the northwest corner of the colony."

These objections are attempted to be met by the suggestion, that these replies and recitals would naturally refer to that part which was under immediate government, where they were exercising jurisdiction, and not to that part of their claim inhabited by Indians only, and to which her laws were not as yet extended.

They are offset by answers to like questions: In 1680, "our bounds are exposed in our charter;" in 1720, by Governor Saltonstall, "but this is certain, that if we may extend our right as far as our charter does our bounds, we shall come athwart our friends," (meaning the French,) "at Mississippi, long before we arrive at our western term," and in 1773, Governor Trumbull again, "our bounds are expressed in our charter."

✓ 4. That Governor Wolcott, 13 March, 1754, wrote to Governor Hamilton, of Pennsylvania, as follows: * "There being now no uninappropriated lands with us, some of our inhabitants hearing of these lands at Susquehanna, and that it was north of the grant made to Mr. Penn and that to Virginia, are upon a design of making a purchase from the Indians, and hope to obtain a grant of it from the Crown. This appearing to be a design to promote his Majesty's interest, and render the country more defensible, we were all well wishers to it. But Mr. Armstrong informs me that this land is certainly within Mr. Penn's grant; if so, I don't suppose our people had any purpose to quarrel with Pennsylvania. Indeed, I don't know the mind of every private man, but I never heard of our leading men express themselves so inclined." †

* See the whole letter, II Penn's Arch., p. 126.

† SOME LATER OPINIONS OF SOME CONNECTICUT PEOPLE.

(From the *Pennsylvania Packet*, March 21, 1774.)

"NEW HAVEN, (CONNECTICUT,) March 7th.

"At a legal town meeting of the inhabitants, at the State House in this town, yesterday,

After mature deliberation on the present alarming situation this colony is involved in by extending their jurisdiction over the Susquehanna lands, &c.,

The following votes were passed by a very great majority:

Voted, That it is the opinion of this town that this colony's extending their jurisdiction over those lands lying west of New-York, on the Susquehanna river, and challenged by Mr. Penn, as being within his patent, without first prosecuting their claim before his Majesty in council (the only proper place of decision) will be tedious, expensive and of a dangerous tendency.

At the same date, Lieutenant Governor Fitch wrote: * "I do well approve of the notice you take of the attempt some of the people of this colony are making, and the concern you manifest for the general peace. I know nothing of anything done by the *Government* to countenance such a procedure as you intimate * * * and am inclined to believe *this wild scheme* of our people will come to naught, though I certainly can't say;" and again, being now Governor, Mr. Fitch, 29 November, 1754, writes to Governor Morris:† "I should be glad it was in my power to do more services than I am at present able to afford to prevent the ill consequences you have so well pointed out, as proceeding from the purchase of those lands on Susquehanna, in the manner in which some people of this colony have presumed to act." * * * *

"Indeed, I must confess myself to be unacquainted with the scheme proposed by *these persons*, and know but very little about the steps they have taken, *as they never made any application to the government about this matter.* * * *

* I have been informed some live in this government * * *
* * some in England, some in New York, the Jersey, and elsewhere."

These letters have a formidable look. It could only be replied "that they show the writers to be *very ignorant* of the interference of those two charters, at that time:" that they were "the private opinion of the writers, and not of the colony;" that Governor Wolcott is careful "not to disclaim title;" and that Fitch's letter "is a *waver* only of Governor Fitch from the line of his duty;" and that, in consequence, "*he was left out at the next election.*"

Voted, That Col. Leveret Hubbard, Messrs. Adam Babcock and Edward Carrington, be a committee to repair to Middletown, on the last Wednesday of March instant, and confer with such gentlemen as may be appointed by other towns, and then and there drawn up a suitable petition and remonstrance to be presented to the Honourable General Assembly, to be held at Hartford in May next, on the premises, and make report to this town at their next meeting.

Voted, That this meeting be adjourned till the next freeman's meeting, on the 11th of April next, at two o'clock, P. M.

Extract from the Proceedings of "A Meeting of the Committees of Twenty-three Towns in this Colony at Middletown, on the 30th of March, 1774, appointed at their respective Towns to confer together on the present alarming Situation of this Colony, respecting the public Measures lately pursued by the Honourable General Assembly respecting Sasquehannah Matters," &c.

To the General Assembly:

"Your Honours Remonstrants beg Leave, with the Freedom of Englishmen, and the Duty of Subjects, to lay their Grievances before your Honours, the principal of which, and from which, as from its Source, all other Grievances are derived, is, that the Proprietors of the *Sasquehannah Company*, who claim the Lands over which the Jurisdiction is extended, who were Members of the last Assembly, and deeply interested in the Questions discussed and determined, were suffered to and did sit and act in said Assembly in those very Matters, in which they were so deeply interested, and for which their Partners settled on said Lands under their Votes, and for their Benefit, were Sutors to said Assembly. Your Remonstrants conceive themselves warranted to assert that said Members were interested."

But here they beg leave to show to your Honours, that they conceive the Extension of Jurisdiction to those Lands by the last Assembly was of dangerous, and, in their Apprehension, may be of fatal Tendency.

We therefore humbly pray your Honours to exclude the Proprietors of the *Sasquehannah Company* from a Voice on these Matters, and reconsider the aforesaid Votes and Doings of the Assembly in October and January last."

* II Penn'a Arch., 125.

† II Penn'a Arch., p. 208.

V. That the long silence and non-claim of Connecticut as to the western lands, are a waiver of their charter right, or rather an evidence of their want of such right.

It was contended that the first possession there, constructive and actual, was under Connecticut. The truth probably was, that for near a century after the dates of their charters, it was not known that they interfered at all. The acquiescence of Connecticut, under the grant of Penn, is of no more force than that of the proprietaries under the grant of Connecticut, and can have little or no weight on either side, since, until long after, the Indians refused to give up the country to either.

VI. That the Colony of Connecticut stood by and did not prevent the settlement about the city of Philadelphia, that being within their charter bounds, which extended to the fortieth degree of latitude.

It is admitted that Connecticut paid but little attention to the westerly part of their claim, and the reply to this is, by the *argumentum ad hominem*: inasmuch as it is alleged "that the Assembly of the Province of Pennsylvania, about the year 1755, would not own that Fort Duquesne was in Pennsylvania, but was in the Colony of Connecticut."*

VII. That the charter ought not to be so construed as to include the land in question, because of the immensity of the country which would be embraced within the charter limits.

The sufficient reply is, that the inquiry is not what the charter ought to have been, but what, in fact and law, it really was. King Charles deliberately confirmed to the assigns of the Plymouth council, the grant of his ancestors.

VIII. The charter gives no title west of New York, because of the interjacency of another province.

It was admitted that the intermediate situation of New York might be an inconvenience, but by no means rendered the conveyance of the soil, in either part, illegal or impossible. Besides, there was a precedent, never questioned, in Massachusetts, which province included Maine, but was intersected by New Hampshire.

IX. Some objections to the title of "The Susquehanna Company."

1. That the company never had a formal grant from the colony of Connecticut.
2. That acts of Parliament are never used to grant lands. The alienation of lands is executive, not legislative.

*This is stated on the authority of Mr. Samuel Avery, but I have not been able to verify it by any record.

3. That the colony of Connecticut received nothing from the company as a consideration for those lands.

4. That Connecticut never passed any law granting lands to the company in the Province of Pennsylvania.

5. That the company made their purchase of the Indians contrary to the laws of Connecticut.

6. That Connecticut never granted the land by any formal grant.

7. That the company never had a sealed patent.

To all of which it is deemed a sufficient reply that the matter is exclusively between the colony and the company, and that the proceedings of the company had again and again received the most full and explicit recognition and confirmation by the government of Connecticut.*

But I do not consider it immaterial that Connecticut, as a colony or State, did not either make any purchase of the Indians or enter into any negotiation for the purchase of their title. It was something that the Penns did not find the colony of Connecticut in the market against them, but disclaiming and disowning the acts of her citizens; that they found only *private parties* dealing with the Indians, which was against the laws of Pennsylvania, and in 1717 had been prohibited by Connecticut herself.

Connecticut gave no deeds and entered into no covenants

* The Assembly of Connecticut passed, at various times, the following resolutions and laws, "recognizing" the settlement at Wyoming.

1771, May. *Resolved*, "That the lands west of the Delaware, and in the latitude of that part of this Colony eastward of the Province of New York, are well contained within the boundaries and descriptions of the charter granted by King Charles II, in 1662."

1773, Oct. *Resolved*, "That the Assembly, at this time, will assert, and in some proper way support their claim to those lands contained within the limits and boundaries of their charter, which are westward of the Province of New York."

Resolved, "That a committee be appointed to treat with Governor Penn respecting an amicable agreement between the two Colonies concerning boundaries, either to settle by mutual agreement or join in an application to his Majesty for commissioners to settle said line," &c.

1774, Jan. 7. *Be it enacted, &c.*, "That the settlers on the lands west of the Delaware are incorporated into a town, called Westmoreland, bounded east on the Delaware, extending fifteen miles west of the Susquehanna river, and north and south on the north and south lines of the Colony of Connecticut. The said town is attached to the county of Litchfield."

1774, January. An act "authorizing the Governor of Connecticut to issue a proclamation forbidding persons settling on lands within the charter westward of the Province of New York, without liberty from the General Assembly."

Also, An act "authorizing Zebulon Butler, Esquire, to warn a town meeting at Westmoreland, for the purpose of appointing town officers."

1774, May. *Resolved*, "That a petition be presented to his Majesty praying that commissioners may be appointed to settle the bounds between the contending Colonies."

Also, "An act altering the bounds of the town of Westmoreland, viz: Extending it west to the lines of the treaty of Fort Stanwix."

1775, May. An act "making the town of Westmoreland a probate district."

Also, "making it a military district, to be called 'the Twenty-fourth Regiment.'"

Also, appointing Joseph Sluman Judge of the probate court of the town.

1776, Oct. An act "That the town of Westmoreland, lying on the west of the Delaware river, in the Colony, shall be a *distinct county* and called the county of Westmoreland, and shall have and possess the same powers, &c., as other counties," &c.

1777, May. "This Assembly appoints John Jenkins, Esquire, to be judge of the county court, in and for the county of Westmoreland, for the year ensuing."

1778, May. *Resolved*, "That the Committee of Pay table adjust and settle the pay abstracts of Westmoreland militia."

1782, Oct. In a resolution it is recited "that a large tract of land within the limits of this Colony or State, and on the west side of the Delaware river, was purchased of the natives by the Susquehanna and Delaware Companies, and by the consent of this State," &c.

with those people, assumed no risks upon which the reciprocal right of protection could be based and demanded.

X That the King, in 1763, forbid the settling of this territory.

It is claimed that this order was procured upon *ex parte* representations made by Mr. Penn, and that the King himself, having granted the lands by charter, had no authority reserved to forbid the settlement.

XI. To the Indian deed to the Susquehanna Company, in 1754, it was objected :

That the description of the land was written on an erasure.

That it was executed at different times and before different subscribing witnesses.

That it was not executed in the open, public, national manner in which the Indians sell and transfer their lands.

Per contra, it was insisted : that this purchase was made at the most public treaty ever held with the Indians, commissioners from Pennsylvania being present, and themselves concluding a purchase there and then. That it was made in the most public manner; the consideration money the most publicly paid; the deed most publicly executed, and by more sachems and chiefs than any other treaty with the Indians. That it was in negotiation more than a year. That the Indians well understood what they did, and have ever since acknowledged their sale; and in 1763 confirmed the sale, removed, and gave them ample possession; and that the deed itself was in possession of the Pennsylvania party at the hearing at Trenton, and that they would have produced it if wanting in substance or form.*

Thus the title of the Susquehanna Company was riddled with objections.

To the patent to William Penn it was objected :

1. That it bore date nineteen years after that to the Colony of Connecticut—seventy-five years after the first grant to the Plymouth Council—fifty-five years after they took possession

*The Indian deed of 11 July, 1754, to the Susquehanna Company provoked great feeling, and is said to have opened the way for the defection of some of the Six Nations from the English to the French. For an account of its origin, see Claus' letter, II Penn's Arch., 174; Rev. Dr. Peter's letter, X Col. Rec., 177.

How it was to be "got rid" of. See II Penn's Arch., pp. 224, 225, 255, 259, 273, 279, 292, 370; VI Col. Recs., 69, 248, 249, 252, 268, 271, 277-284, 286-7-8, 290-1.

March 1, 1755. Conrad Weiser writes that Tachnechdorus, the chief of the Cayogas, told him "that whosoever of the whites should venture to settle any land in Wyomock or thereabouts, belonging hitherto to the Indians, will have his creatures killed first, and then if they did not desist, they themselves would be killed, without distinction, let the consequence be what it would." Weiser then refers to the Connecticut scheme, and adds that, out of a guilty conscience for the murder thus threatened, the Indians would submit themselves to the French, and that "the consequences of that would be very disagreeable to the English, in general, in this and neighboring colonies."—Penn. Arch., Vol. II, p. 259.

at Plymouth—forty-five years after the settlement at Saybrook—forty years after their possession on Delaware bay—and ten years after their possession at Minnisink.

That in the language of Dr. Franklin, the grant was made "in a most alarming period, the nation in a strong ferment, the Court forming an arbitrary plan by cajoling some corporations and forcing others to surrender their charters, so that by the abuse of law, the disuse of parliaments, and the terror of power, the kingdom became in effect the prey of his will and pleasure."

2. That the grant to Penn, and not that to Connecticut, was was founded on the King's ignorance or mistake as to the geography of the premises; that he did not know the exact latitude of the southern boundary of Connecticut; and when he extended Penn's charter northward to the 43° of latitude, that being an astronomical line to be scientifically located, he had no reason to suppose that it would interfere with the charter limits of Connecticut;* that he would not knowingly have twice granted the same land, as that was opposed to the decisions of his judges and council.

To the Indian deed to Penn, made at Fort Stanwix in 1768, it was objected:

That it was the result of an intrigue with the Six Nations, continuing from 1754 to 1768, was a palpable fraud, the result of undue influence and downright corruption, and the fruits of gross impositions upon the easy credulity, ignorance, and mercenary pliability of the Indians.

It is worthy of remark that the representatives of Pennsylvania did not offer in evidence or plead this deed before the Council of Trenton.

It will thus be seen that every nook and corner of this subject has been ransacked. Indeed, I am by no means certain that I

* As late as September, 1751, in answer to "The Board of Trade and Plantation's" circular, Governor Hamilton said the Province "is bounded on the north by the Province of New York and a part of the Lake Ontario, * * * on the west by a small part of the said Lake Ontario, the Straits of Niagara, Lake Erie, and the country now possessed by the Six Nation Indians."

In October, 1751, Governor Clinton, of New York, reminds Governor Hamilton "that the northern boundary of your colony is fixed to the beginning of the 43° of latitude * * * and it is thought that the facts must have been misrepresented that could induce your Honor to fix the *beginning of the 43° degree near Albany*."

Perhaps it was not altogether "ignorance" of bounds that moved our worthy predecessors. In the course suggested to "get rid" of the deed of 1754 to the Susquehanna Company, under date of July 2, 1755, Thomas Penn writes to Governor Morris, "When a purchase" (from the Indians) "is made, I would not have it in words too particular, but to extend to the *Northern boundary of the Province of Pennsylvania*, without any mention of a degree, * * * I had rather avoid making the Government of New York privy to it, as they expect we shall confine our purchase to the *forty-second degree*, whereas we shall certainly expect three degrees. Mr. Paris advises us not, at present, to make application to the Crown for orders to prevent the settlement of the Connecticut people, but to take them up and from some trial, bring it over."

have seen all the matters urged by these enterprising and earnest contestants.

We are now ready to go forward to the final judicial inquiry and determination on this state of facts, to wit: the decree at Trenton, on the 30th December, 1782.

V.

THE DECREE OF TRENTON.

After the failure of Colonel Plunkett's expedition, in 1775, we left the Yankees in possession. It required some considerable self control and more patriotism in Pennsylvania to drop the controversy at that stage. But, under the request of Congress, she did so. Promptly on the appearance of peace, after the surrender of Cornwallis at Yorktown, the State, by petition of her President and Supreme Executive Council, prayed Congress to appoint commissioners "to constitute a court for hearing and determining the matter in question, agreeably to the ninth article of the confederation." Connecticut asked for delay, "because that sundry papers of importance in the case are in the hands of council in England, and cannot be procured during the war." Congress overruled the motion, and on the 28th day of August, 1782, issued commissions to *William Whipple*, of New Hampshire; *Welcome Arnold*, of Rhode Island; *David Brearly* and *William Churchill Houston*, of New Jersey; *Cyrus Griffin*, *Joseph Jones*, and *Thomas Nelson*, of Virginia," or any five or more of them, to be a court of commissioners, with all powers, prerogatives, and privileges incident or belonging to a court, "to meet at Trenton, in the State of New Jersey, on Tuesday, the 12th day of November next, to hear and finally determine the controversy between the said State of Pennsylvania and State of Connecticut, so always as a major part of said commissioners, who shall hear the cause, shall agree in the determination."

The commissioners, except Joseph Jones and Thomas Nelson, met and formed the court November 19, 1782. Messrs. William Bradford, Joseph Reed, James Wilson, and Jonathan D. Sergeant, appeared as counsel for Pennsylvania, and Messrs. Eliph-

alet Dyer, William S. Johnson, and Jesse Root, as counsel for Connecticut.

Upon the assembling of the court, the agents for Connecticut, after reciting the possession and improvements of large numbers of persons holding under the Susquehanna Company, moved that "the tenants in possession, holding as aforesaid, be duly cited to appear and defend."

The court rightly overruled the motion, "that the same cannot be admitted according to the construction of the ninth article of the Confederation."

The commission under which they acted was founded on the second clause of the ninth article. The determination of the claims of private property, or right in the soil, would have been *coram non judice*—that jurisdiction being derived from the third clause of the article—the two jurisdictions could not be blended.

Connecticut then moved an adjournment to procure evidence, especially "a certain original deed from the Indians of a large parcel of the land in dispute obtained from their chiefs, and sachems, at their council in Onondago in A. D. 1763, and now in England."

The court did not grant the postponement.

The agents of Pennsylvania set forth their claims as follows:

1. The charter of King Charles II to Sir William Penn, dated March 4, 1681.

2. That said Penn and the succeeding proprietaries purchased from the native Indians the right of soil in some parts of the territory: and that the Indians had conveyed to Thomas and Richard Penn, particularly on the 25th day of October, 1736, "the full and absolute right of preëmption of and in all the lands not before sold by them to the said proprietaries, within the limits aforesaid."

3. They stated the limits of the said charter.

4. That by virtue of the Declaration of Independence the articles of Confederation, and the act of the Legislature of 27th November, 1779, the right of soil, and estate of the late proprietaries, was vested in the State, and that "Pennsylvania was entitled to the *right of jurisdiction*, and *right of soil* within all the limits aforesaid."

5. The claim of certain settlers under title derived under Connecticut, and the assertion of title by the State of Connecticut.

The agents for Connecticut exhibited a statement of the claim of that State, in which they deduced the title from the Crown, through the Plymouth Council, and the charter of Charles II, dated April 23, 1662, described the limits of that charter; set forth the exception of New Netherlands, afterwards New York; alleged that, in 1753, the State having located and settled their lands on the east side of New York, and being in a condition to extend their settlements in the western part of their patent, for that purpose permitted certain companies of adventurers to purchase large tracts of land of the native Indians, on the Susquehanna and Delaware, within the limits of their charter, "and in A. D. 1754, said companies proceeded and made settlements on said lands, so purchased, as aforesaid, and ever since have, though with various interruptions, continued to hold and possess the same, under the title of the Colony of Connecticut, and the Legislature have approved of the purchases and settlements of the adventurers aforesaid, and have actually erected and exercised jurisdiction in and over said territory, as part and parcel of said colony."

The court was in session forty-one judicial days.* On Monday, December 30, 1782, they pronounced the following judgment:

*The full proceedings of the court at Trenton will be found in Pa. Arch., Vol. IX, pp. 679-725.

The following letters will throw some light on the conduct of this great cause before the court:

Mr. Bradford to President Dickinson.

Novr. 20, 1782.

"SIR: I beg leave to inform your Excellency and the Council that the Court of Commissioners have at length proceeded to business. We, however, are still upon the threshold of the Cause, and whether we shall proceed any further is still undetermined. The Agents for Connecticut seem determined to use every endeavor to prevent a decision of the Cause. First they demanded that the original petition which was presented to Congress, should be produced; an argument ensued and they were overruled. Next they objected to the validity of our Agency, and contended that we had no authority to appear before that Court. After argument the Court held our powers to be sufficient. After this, They contended that the Court could not proceed unless the Tertenants or others claiming lands in the contested Territory, were summoned and made parties in the suit. This they warmly contended for, but were as unsuccessful as before. At the next meeting of the Court we moved that the Court would proceed to hear the Cause. The Agents prayed time to have a conference with us, which they alleged might prevent any further motions to delay the Cause. It was granted to them: and their proposal to us has been, that we will admit *exparte* depositions and concede that there is in England a certain Indian deed of part of the Lands, in question, fairly executed made to the Susquehanna Company, and of which they have no copy. These proposals met with the answer that might have been expected, and in consequence of our refusal, they propose to move that the Cause shall not be heard till they can procure the witnesses and the deed. We trust that they will not be gratified in this unreasonable request: if they can prove such a deed to have existed and that it is in the possession of the enemy, no doubt its contents may be given in Evidence.

"The Spirit however which has been discovered on these occasions, induces us to wish for Evidence the most legal and unexceptionable. If the Charter and Indian deeds cannot be procured, we could wish that the records of them were brought forward. We are particularly anxious to have the deed of Pre-emption in 1736, the deed of 1749, and the last that was obtained in 1768. We also wish that Mr. Thomas Willing, who was a witness to the deed in 1754, when that of 1736 was recognized, would attend the Court as soon as possible."

"We are unanimously of opinion that the *State of Connecticut* has no right to the lands in controversy.

"We are also unanimously of opinion that the *jurisdiction* and *pre-emption* of all the territory lying within the charter boundary of Penn-

Mr. Reed to President Moore.

"November 23, 1782.

SIR: I have the Honor to inform your Excellency and Council that I arrived this evening from Trenton, and am sorry to inform you that the proceedings of the Agents on the part of Connecticut manifest the utmost Intentions to postpone the hearing of the Cause and break up the Courts without a decision on the merits. After objecting to our powers, to the non Production of the original Petition and want of notice to the settlers, in all which, after long arguments, they were overruled—they prayed that the Cause might proceed, with a Reservation of moving an adjournment of the Cause at any stage of it, at the same time adding, that they had left sundry papers in England essential to the merits, of which they gave a verbal Detail. The motion took up two days; and on Friday the Court gave an Opinion, that, though they would not expressly determine against receiving motions for continuing the Cause, yet they should receive them under the direction of the established Rules of Laws & Practices. We then began to open the Cause on the part of Pennsylvania. But I must first observe, that on Friday morning we exchanged States of our respective Claims, which were read and filed, Copies of which will be forwarded to your Excellency and Council as soon as possible. Among the papers said to be in England, they lay great stress on the Indian deeds, which they alledge to have been left in that Kingdom. We have treated their motion for delay with as much freedom, that it would be an inexpressible mortification to us to be obliged to ask a delay: and we have stated our Indian deeds so strongly as to make them part of our title—fully presuming that as they were in the State, and the Powers of obtaining them very ample, that no difficulty would have occurred in obtaining them.

LOWER SMITHFIELD, Nov. 23, 1782.

GENTLEMEN: Agreeable to promise, I have been in Upper Smithfield, as also in the States of Jersey and New York, to obtain the best Information in regard of the time of the purchase and actual settlement of the Upper Parts of this Country above Walpeck Ferry.

I have spoken on the subject with the oldest men now in being, both in Jersey and New York, but by reason of their old age and infirmities, it is out of their power to attend at Trenton. I hope the bearer, James Vanaken, Esqr., will fully and distinctly prove the actual settlement of the Land on Delaware within the pretended claim of Connecticut.

JOHN VAN CAMPEN.

Messrs. BRADFORD, REED, and others."

Mr. Reed to George Bryan.

"TRENTON, Tuesday, December 3, 1782.

DEAR SIR: The agents for Connecticut have brought their testimony down to their Indian Deeds, but here is a lamentable failure; their best deed was carried to England, and a Welsh attorney carried it down with him to that country, and there it stands pledged for a Counsellor Gardiner's debts; the other was brought here, and has been lost since their arrival. Dyer having told us it was much blurred and blotted, but they had a fair copy. We, you may be sure, have our suspicions; Sergeant Just now asked him if he had looked in his breeches. I suppose you have heard the anecdote of the stockings. Yesterday they attempted to read the proceedings of the Delaware Company on the Susquehanna, that is, the work of the adventurers on the lands in dispute; this point is now before the court for consideration. Our cause at present stands fair enough. But I foresee it will be very tedious. Colonel Dyer will submit to no order; he speaks twenty times a day, and scarcely ever finishes one sentence completely. Dr. Johnson is the ablest man in the agency, he is a good speaker, and is a man of candor. Our court, pretty well as courts go.

When you write, be careful as to opportunities. I mean don't trust suspicious hands. F. S. Since writing the above, the court determined not to admit the copy, and soon after the miserable original was found. What can we think of these folks!—*Life of Joseph Reed, by William B. Reed, vol. II, pp. 328, 329.*

Mr. Reed to George Bryan.

"TRENTON, December 13, 1782.

We have now got to summing up the cause, and I think without being too sanguine, we may justly expect a full decree in our favor. It was agreed to speak alternately. Mr. Root began, making use chiefly of Trumbull's Pamphlet as a brief. It was very dull, and much said of the policy of taking off this grant for a new colony, &c., &c. We expected that each would take up two days, as the evidence is multifarious and prolix, but he finished in two hours, or a little more. Mr. Sergeant followed him, and although he evidently abbreviated, he took up Wednesday and Thursday. Mr. Wharton came up here to give evidence of the disclaimer of the Indians at Fort Stanwix, but the fear of offending the Delegates from Connecticut was remarkably visible

"sylvania, and now claimed by the State of Connecticut, *do of right belong to the State of Pennsylvania.*"

All the public, corporate rights of Connecticut, as to jurisdiction and property in the land, were embraced within the jurisdiction of this court, and this decree was final and conclusive *between the States* which were parties to the cause.

That this determination did not touch the private rights of property not only appears by the record, but is placed beyond doubt by the following letter to the Pennsylvania authorities, accompanying the award :

"TRENTON, 31st December, 1782.

"SIR: We take the liberty to address your Excellency, as private citizens, lately honored with a commission to hear and determine the controversy between the States of Pennsylvania and Connecticut, relative to a dispute of territory. In the course of executing this commission, we have found that many persons are, or lately have been, settled on the lands in question. *Their individual claims could, in no instance, come before us, not being in the line of our appointment.* We beg leave to declare to your Excellency, that we think *the situation of these people well deserves the notice of government.* The dispute has long subsisted. It may have produced heats and animosities among those living on or near the country in contest, and some imprudences may take place, and draw after them the most unfavorable consequences.

"With all deference, therefore, we would suggest to your Excellency and council, whether it would not be best to adopt some reasonable measures to prevent any, the least, disorder or misunderstanding among them, and to continue things in the present peaceable posture *until proper steps can be taken to decide the controversy respecting the private right of soil in the mode prescribed by the confederation.* We doubt not an early proclamation from the Executive of Pennsylvania would have all necessary good effects, and we feel ourselves happy in the fullest confidence that every means will be adopted or acquiesced in by the State to render the settlement of this dispute complete and satisfactory, as far as may be, to all concerned.

We have the honor to be, with great respect,
Your Excellency's most obedient,
And humble servants,

WM. WHIPPLE,
WELCOME ARNOLD,
W. C. HOUSTON,
DAVID BREARLY."

President DICKINSON.

This letter remained a carefully guarded secret until the trial of *Van Horne's lessee vs. Dorrance*, in 1795.* With its appearance, came another, written by Hon. Cyrus Griffin,† the remaining member of the court of Trenton. It is as follows :

the whole time he was here. To-day Colonel Dyer goes on, and we expect much amusement, though little information. Perhaps we may be surprised, as indeed we shall be, if he argues with ability or judgment. Thus we stand at present, and have now a reasonable prospect of dismissal next week, which is the least time that has ever been spent on such a cause. The dispute between New York and New Jersey took up three months. We all grow impatient, but I do not mean to leave this till we have finished."—*Life of Joseph Reed, by William B. Reed, Vol. II, p. 329.*

* See Appendix II.

† Cyrus Griffin was, at the date of this letter, 15 Sept., 1796, a Federal Judge in the District of Virginia.

"SIR: Being upon a tour of duty in the line of my office, I had not the pleasure of reading your letter until yesterday.

"Before the commissioners determined that important contest between Pennsylvania and Connecticut, it was agreed:

"1st. That the reasons for the determination should never be given.

"2d. That the minority should concede the determination as the unanimous opinion of the court.

No doubt sufficient reasons appeared to us to adopt these preliminary points. Whether strictly justifiable, or at present would be adopted, I will not undertake to say. Perhaps a different course might be pursued; but this I will undertake to say, that no court ever met and decided a great question less subject to partiality or corruption, or in which more candor and freedom of debate were exercised.

"As you seem to suppose, I do not know in what manner the jurisdiction might be considered if tried again, and especially since a number of important discoveries have been made, and a mass of evidence can now be produced which was not known at that time. But I can assure you, sir, that the commissioners were *unanimously of opinion* that the *private right of soil should not be affected by the decision*. The decision was *not to reach the question of property in the soil*.

"We recommend *very strongly*, derived from *legal and political grounds*, that the *settlers should be quieted in all their claims, by an act of the Pennsylvania Assembly*; and that the right of soil, if I recollect truly, as derived from Connecticut, *should be held sacred*. Such, however, I AM CERTAIN, was the opinion of the individuals who composed that court."

After the decree at Trenton, a petition was presented to Congress by Zebulon Butler and others, *claiming the private right of soil* under Connecticut, and praying for a court of commissioners to determine their claim. On the 23d of January, 1784, Congress resolved to institute a court for that purpose; at length, however, the resolution was repealed, because the petition "doth not describe, with sufficient certainty, the tract of land claimed by the said Zebulon Butler and others, nor particularly name the private adverse claims under grants from the Commonwealth of Pennsylvania." Congress seems to have acted on the theory that each claimant should bring forward a separate petition, describe the land claimed, and name the adverse claimant with certainty. They do not seem to have entertained any doubt of the right to such special trial, independent of the decision at Trenton.

But the settlers were poor, oppressed, and wasted by war; and by this time, 1786, the heavy hand of civil and military power was raised to crush them. Before another petition could be brought forward, the new Constitution was adopted, and, as a matter of course, the Federal courts succeeded to all the jurisdiction before vested in the special courts of commissioners.

It has generally been considered that the decree of Trenton was made rather out of considerations of *policy* than *right*: that Connecticut had pre-arranged the case with Pennsylvania and

Congress; and that, out of the arrangement, she was to get the "Western Reserve." The theory is based on a report on finances made in Congress on 31st of January, 1783, a month after the decree, in which it is said, incidentally, "*Virginia and Connecticut have also made cessions, the acceptance of which, for particular reasons, have been delayed.*" These cessions came thus:

At the close of the American Revolution, the circumscribed States contended that all unlocated lands of the States which ran to the "South Sea" should, beyond some reasonable bounds, belong to the United States in common, as a prize equally contended for by all. Congress recommended that this be done. Massachusetts, New York, Connecticut, Virginia, North Carolina, and Georgia severally passed such cessions. In 1786, it was "Resolved, That Congress, in behalf of the United States, are ready to accept all the right, title, interest, and claim of the State of Connecticut to certain western lands, &c." When the cession was offered, the absolute acceptance of it was opposed by Pennsylvania, whose members in Congress moved a proviso that it should not be construed or understood to affect the decree of Trenton. This proviso was rejected. They then moved that Congress should not accept the cession, because it might virtually imply a sanction of what was *not* ceded; but if Connecticut would first relinquish to New York, Pennsylvania, and the United States respectively, all her claims of jurisdiction and property west of the eastern boundary of New York, the United States would then release to Connecticut the property, but not the jurisdiction of a tract of land, of one hundred and twenty miles extent, west of Pennsylvania. This resolution was negatived. A proviso was then moved, that the acceptance of any cession of western territory from any State which had been or might be made, should not be "construed or understood, as confirming or in any way strengthening the claim of such State to any such territory not ceded," which also received a negative. Again it was moved, to be accepted, on this condition, that it should in no degree affect the claims of any State to any territory, ascertained by the decree of a Federal court, to be within the territory or jurisdiction of such State, or to injure the claims of the United States, under acts of cession from any individual State. This was also negatived. At last the acceptance was passed in these unqualified terms. "Resolved, That Congress accept the

said deed of cession, and that the same be recorded and enrolled among the acts of the United States in Congress assembled."

This has been regarded as a substantial recognition of the Connecticut charter by the United States.

By the deed, Connecticut grants "all right, title, interest, jurisdiction, and claim to certain western lands, beginning at the completion of the forty-first degree of north latitude, one hundred and twenty miles west of the western boundary line of the Commonwealth of Pennsylvania, as now claimed by the said Commonwealth, and from thence by a line drawn north parallel to, and one hundred and twenty miles west of said west line of Pennsylvania, and to continue north until it comes to forty-two degrees and two minutes of north latitude."

This reservation, or rather tract *not ceded*, is (bounding it easterly by the west line of Pennsylvania) one hundred and twenty miles east and west, and one degree and two minutes wide, north and south, containing several millions of acres. This was called New Connecticut, or the Western Reserve—a goodly part of northeastern Ohio.*

Whatever the motive, Connecticut promptly acquiesced in this decision at Trenton. Not so, however, the claimants under her. They held their case as still undecided. They admitted the retrospective operation of the decree as to the public rights of the immediate parties, that is, the two States, but contended

* This still left the Connecticut claim in Pennsylvania, and to what was called "the Gore," in New York, unaffected. The claim was finally and literally torn out by the roots in this wise: In 1800 Congress passed an act authorizing the President of the United States to convey to the Governor of Connecticut, for the benefit of all persons holding under Connecticut, all the territorial right of the United States to said Western Reserve: Provided that within eight months the State of Connecticut should, by legislative act, *renounce forever*, for the use and benefit of the United States, and of the several individual States who might be therein concerned, respectively, and all those deriving claims or title from them, or any of them, "all territorial and jurisdictional claims whatever, under any grant, charter, or charters whatever, to the soil or jurisdiction of any and all lands whatever, lying westward, northwestward, and southwestward of the counties, in the State of Connecticut, which are bounded westwardly by the eastern line of the State of New York, as ascertained by an agreement in 1733," which act was accepted, in 1800, by the Assembly of Connecticut, and the cession made accordingly, Connecticut releasing to the United States all *jurisdictional title* to the Reserve. In 1793, she had conveyed to Ward & Halsey, "the Gore," that is the strip 2' wide, lying along the northern line of Pennsylvania—not greatly to the profit of W. & H.. It may be said. And so ended the "Connecticut Charter."

In further evidence that the Decree of Trenton was not regarded as anything more than a wise method of reaching political results, and not made of right, may be cited the closing up of the claim of Massachusetts to territory in New York, founded in the old Plymouth charter. *The case was settled.* New York ceded to Massachusetts and acknowledged her claim to all lands in New York, west of a line running from a point at the eighty-second mile post west of the northeast corner of Pennsylvania, (the point is a little southwest of Elmira,) north to Sodus Bay, in Lake Ontario. This was a valuable tract including the Genesee valley. As matter of interest, it may be noted that Massachusetts sold this land to Gorham and Phelps, who, with their grantees, opened land offices in western New York, and surveyed their lands in regular blocks. The surveys and methods of their land office became the models upon which the United States have ever since conducted their land business.

that "the principle of relations does not retrospect so as to affect third persons." They cited the long line of precedents as to settlements between colonies contending about the lines of jurisdiction; that the grants of colonies made to subjects had been held sacred, whether within the line as it was after settled or not. Such had been the case between Rhode Island and Connecticut, between Massachusetts and Connecticut, Massachusetts and New Hampshire, between New York and Connecticut. That had been the case between Pennsylvania and Maryland, and between Pennsylvania and Virginia.* New York, indeed, attempted to infringe the rule in the case of New Hampshire grants in Vermont, but finally conformed to the justice of the general rule. And it is perfectly analagous to the doctrine respecting officers *de facto*, whose acts, so far as relates to the rights and interests of third persons, are effectual in law, notwithstanding the offices are found to belong of right to other persons.

The vote of a sitting member in a legislative assembly is legal, though it may afterwards be decided that he was not elected. The decision in such cases never operates retrospectively.

By the former Constitution of Pennsylvania, a year's residence was a requisite qualification to vote at elections. Within a year after the Trenton decree, twenty-four Wyoming settlers, who had lived a number of years on the contested land, attended in the county of Northumberland, and gave their votes for two members of the Legislature and one of the Executive Council. The votes were received by the returning officer, and decided the election in all the three cases. But the elections were contested, these votes set aside, and the elections declared in favor of the other candidates, by the Legislature and the Council respectively, *because the twenty-four persons had not resided a year in Pennsylvania, for that territory was Connecticut until the Trenton decree.* This legislative and executive determination proceeded upon the same great principle that the jurisdiction decided by the Trenton commissioners, does not go back

* See act 1st April, 1784, (2 Smith, Laws 261,) "confirming an agreement between Pennsylvania and Virginia, providing that the private property and rights of all persons acquired under, founded on or recognized by the laws of either State be saved and confirmed to them although they should be found to fall within the other State," &c.

For the history of the "lost county" of Yohogania, in Virginia, under this act, see Report of the Surveyor General of Pennsylvania for the year 1865.

and affect the preëxisting rights or condition of private persons.*

In this view, the settlers determined to acquiesce cheerfully in the decree, accept their citizenship in Pennsylvania, but to listen to no terms which involved "abandonment of their possessions."

From this time on, matters are to be conducted under the government of Pennsylvania, and we are to go through the "Second Pennamite War," but the happy outcome is to be under Pennsylvania statutes and the decisions of Pennsylvania courts.

The "reflections" that I would personally make on all the antecedent facts are:

1. That the Connecticut charter of 1662 fairly included the territory described in its limits, as contended for by its partisans.

2. That no action was ever taken by the Crown to vacate it or modify its bounds.

3. That no legal necessity existed to purchase the Indian title, and that what is called "the right of preëmption" is unmeaning and insignificant as between Colonies. The Indian title and possession was a lien or incumbrance, which was to be extinguished or not, at the option of grantees. The charters were not granted subject to Indian titles.

4. One cannot well escape a sort of general intuitive conviction that the court at Trenton worked out the correct result. There is, it is true, no defect in the technical legal title of the Colony of Connecticut. The difficulty is, therefore, to account for this instinctive conclusion against it. Throwing the settlers and their private rights out of the case, I think the weak link

* The minority in the Legislature protested, and assigned the following, among other reasons:

"We, whose names are hereto subscribed, considering the security of elections the only safeguard of public liberty and the peace of the State, do protest against the determination of this House, on the Northumberland election, for the following reasons:

"We conceive the 24 votes set aside as illegal, were given by legal voters, inasmuch as the persons giving them were, in fact, in the government (though not the territory) of Connecticut, which exercised a full jurisdiction over them, until the decree at Trenton.

"We observe that allowing it to be Connecticut, as was contended, until the decree at Trenton, then they may be deemed persons coming from another State, who, producing certificates of their having taken the oaths to such State, become, by law, entitled to vote; this it was fully proved, they had done. Of this construction we apprehend there is a clear and express precedent in the case of the inhabitants of Westmoreland and Washington, on the settlement of the Virginia line, who were admitted to vote immediately, as persons coming from another State.

"We cannot but lament the fatal policy which, instead of conciliating these people, and adopting them as our subjects and citizens, and endearing them to us in political bonds, we are straining the laws against them, and making such a difference between them and the adopted inhabitants of Virginia; and hold ourselves clear of the consequences which must flow from such unadvised proceedings, which, in our judgment, has a strong tendency to revive the dispute, which they may yet do under the articles of Confederation, and drive them back to the jurisdiction of Connecticut, which will be more ready to receive them and renew the old claim, when they find the actual settlers excluded from the common privileges of the citizens of this State. Therefore, we wish it to be known to our constituents, and to the world at large, that we have borne our testimony against the determination on the said election."

in the chain lies here: From the date of Penn's charter, in 1681, to the year 1773, Connecticut had not definitely "asserted title," either by legislative enactment or popular movement. Neither the colonial authorities nor the "leading men" (see Governor Wolcott's letter, *supra*) had, evidently, set any great store by or taken any action based on their possessions west of New York. In 1755 they turned the Susquehanna Company over to the Crown, with the prayer, "*if it should be his Majesty's pleasure to grant said land to said petitioners and thereon erect and settle a new colony.*" (The protest of the Proprietaries of Pennsylvania and the growing troubles between the Colonies and mother country delayed and finally defeated any action on the matter.) I regard it in law as a distinct act of estoppel, by which their claim might well be held by the rest of the world, and especially an adverse claimant, to have become "derelict." But the "dereliction" operated in favor of the *colonists* under the Susquehanna Company, not as their grantees, but as colonists. In this behalf, the course of colonization under the Plymouth charter of 1620 is to be adverted to. The mandate and trust in it, was "to distribute, convey, assign, and set over such particular proportions of lands as are by these presents granted," &c. The conveyance was *to the people*, and the purpose was *the settlement of the country*. To that end, colonists in the Massachusetts Bay had gone into Rhode Island, into Connecticut, and into New Hampshire. They had no particular authority from the grantees in the charter covering those places. They formed numerous small plantations. They extinguished the Indian title, where they could not do better, and extinguish the Indians themselves, as in the Pequot war. They were encouraged to these improvements, and in due time got charters of government. In the *Province* of Pennsylvania matters were different. In many essential respects this was the private property of the Penns—it was their personal possession. Liberal as was their frame of government, *the people** outgrew it and finally confiscated it for the nominal reimbursement of £130,000.

The movement of the Susquehanna Company was, therefore, in accordance with the genius of the whole northern colonization scheme.

In *Carkuff vs. Anderson, 3 Binn., 10*, Justice Brackenridge said: "The appearance of right which the Susquehanna Company, a people of Connecticut, had to advance a claim to this district of country, is in my mind in considering the case before me. I do not view them in the light of trespassers, with a full knowledge of their want of title. At all events, the

* Thomas and Richard Penn to House of Representatives, 1753, say that their father purchased the lands from the Indians, "always at his own charge. At least we do not find a single instance of a purchase having been made at the expense of the people, so that what share they had in such purchases we are at a loss to know, other than the benefits and conveniences which arose from the mutual exchange of friendly offices with the natives."

bulk of them do not appear to have been apprised of their want of title, and I make a great distinction between trespassers knowing, or having good reason to know, their defect of title, and such as may reasonably be supposed to be ignorant of what they are about. Before the decree of Trenton, the most intelligent and the best informed might have been led to believe that the part of the country in question *was settled under a GOOD TITLE* from the State of Connecticut. But, in favor of those who had settled under the idea of a good title, and with an expectation of enjoying the land which they were *improving and defending*, at a great risk and with much loss, from the *common enemy during the Revolutionary war*, THERE IS A CLAIM which ought not wholly to be disregarded. I do not call it a *right*, but a claim on the ground of moral obligation.

"It would have been an exaction of the *summum jus* on the part of the State to have carried into effect *their right*, wholly disregarding *such a claim*. It would have been against good conscience for an individual to do it. * * * I can have no hesitancy in saying that the government at all times, in such cases, * * * are justifiable in *refusing the process of law to dispossess*, or the aid of uncommon means, the *posse comitatus* or militia. * * *

* The *salus populi* gives what is called the *transcendental right* in such cases."

5. That Connecticut, at Trenton, did not insist on her *historical claim* to all lands in Pennsylvania north of latitude 41° north, nor even to all the lands comprised within the Indians' deed, of 1754, to the Susquehanna Company. Her final stand was made on the settlements and improvements made in the county of Westmoreland. There would seem to be no doubt that proof was offered, and successfully, before the court, of actual settlements under Pennsylvania, and under rights derived from the Proprietaries in 1730, 1732, and 1740, thus prior to any others. This, in the judgment of that Court, may well have been held to bring them under the doubt expressed by Mr. Wedderburne, and the others, quoted above, "if the country had been actually settled under the latter grant," (to Penn,) "it would now be a matter of considerable doubt whether the right of the occupiers, or the title under which they hold, could be impeached by a prior grant, without actual settlement."*

6. That at the time of the decree of Trenton the colonies, grown into States, had hardened and settled into definite and reasonable municipal limits, and that decree was correct, both *in right and policy*, saving, as it did, "the private right of soil."

The problem came now between them and the actual *bona fide* warrantees of a Pennsylvania title. It was a question of

* See IX Penna. Arch., p. 715.

real difficulty and delicacy. The land speculators, not numerous, but influential, were reckless and clamorous. The people, the best publicists and the ablest lawyers, gave long and anxious consideration over some device by which a sovereign State might protect its own grantees, and deal justly with the claimants under another sovereignty. The Connecticut settlers had, unquestionably, the sympathy and best wishes of the real population of Pennsylvania. Of late years, they had felt no great interest in the Proprietaries. The Yankees had borne themselves patiently, defiantly it may be, but heroically, without the assertion of any title, except to the land "under their feet," which they had dug out of the forests and wilderness. They had been a sober, steady people, attending faithfully to the serious affairs of life; they had been efficient promoters of churches and schools; they were no bandits or border ruffians; they brought with them, as high views and lofty purposes, in American citizenship, as the most chivalrous or scholarly entertained. There were, doubtless, adventurers among them, but, in war or peace, they illustrated the best results of the bold, free tendencies of Americans. They were a brave, hardy, and proud community. They had, of their own resources, defended themselves and the frontier of the State of Pennsylvania. The overruling supreme equity of the case, enforced by the unyielding attitude of the settlers, led to the adoption of the final legal device, and the acquiescence of all in it, open, as it may be, to some constitutional criticism.

It will surprise us to find that, in fact, as finally adjusted, no fully litigated case ever arose out of the whole unhappy business. There were bluster, threats, vexation, and outrage, but the heart of the settler's title was never pierced. Of the men sent to execute the unsettled and unsteady purposes of Pennsylvania, it may be said that, notwithstanding the estimate in which they and their memories are held, deservedly or not, they must be credited with the supposition that they were acting in the line of duty.

The settlers were left, single-handed, to manage their own case. The State of Connecticut had never, in fact, done anything for the Wyoming settlers. They "recognized" them, but in a way that the "recognition" cost nothing. They levied large taxes upon them, but they returned nothing for their defense. They dropped them, incontinently, after the decree of Trenton.

We are now to address ourselves to the series of actions (and reactions,) which led out of the dilemma.

VI.

THE CONFIRMING ACT:

“The Second Pannamite War.”

A bird's-eye view of Pennsylvania in 1783 will show: *The Friends*, possessed of a prosperous and thrifty metropolis, and rich fields in Philadelphia and the adjoining counties:

The German profitably and industriously settled along the eastern base of the Kittochtinny or “Blue hills,” from the Delaware to the Susquehanna, holding that rich agricultural territory, as he holds it yet:

The Scotch-Irish in the Cumberland Valley, and pushing up the Juniata, and winding around the spurs of the Alleghanies, into the then counties of Bedford and Westmoreland:

The Yankee seated in the valley of the North Branch of the Susquehanna:

The rest of the State, except some of the valleys of the West Branch, was an unbroken wilderness. The total population did not exceed three hundred and thirty thousand.

Of the Yankee settlers, there were probably about six thousand. These were scattered, mainly, in seventeen townships in the county of Luzerne, then including the territory of Wyoming, Susquehanna, and Bradford. Their townships were five miles square, and extended, in blocks, from Berwick to Tioga Point, embracing the bottom lands along the river—Providence, the present site of Scranton, being on the Lackawanna. These townships were Huntington, Salem, Plymouth, Kingston, Newport, Hanover, Wilkes-Barre, Pittston, Providence, Exeter, Bedford, Northmoreland, Putnam, Braintrim, Springfield, Claverack, and Ulster. They contain a present population of one hundred and eighty thousand people.

The inhabitants at once set about meeting the adverse effects of the proceedings at Trenton. A petition was drawn to the Assembly of Pennsylvania, in which, after reciting, at length, the facts, they touchingly and pathetically close thus: “We have settled a country, (in its original state,) but of little value; but now, cultivated by your memorialists, is to them of the greatest importance, being their all. We are yet alive, but the richest blood of our neighbors and friends, children, husbands, and fathers has been spilt in the general cause of their country. *

* * * We supplied the Continental army with many valuable officers and soldiers, and left ourselves weak and unguarded against the attack of the savages and others of a more savage nature. Our houses are desolate—many mothers childless—widows and orphans multiplied—our habitations destroyed, and many families reduced to beggary, which exhibits a scene most pitiful and deserving of mercy. * * * We care not under what State we live. We will serve you—we will promote your interests—will fight your battles; but in mercy, goodness, wisdom, justice, and every great and generous principle, leave us our possessions, the dearest pledge of our brothers, children, and fathers, which their hands have cultivated and their blood, spilt in the cause of their country, has enriched. We further pray that a general act of oblivion and indemnity may be passed * * * and that all judicial proceedings of the common law courts held by and under the authority of the State of Connecticut be ratified and fully confirmed.”

Acting on this petition, the Assembly, *inter alia*, “resolved that commissioners be appointed to make full inquiries into the cases, and report to the House; * * * that an act be passed for consigning to oblivion all tumults and breaches of the peace which have arisen out of the controversy.”

On the 13 March, 1783, the following act was passed the Assembly:

CHAPTER 278. *An act to prevent and stay suits from being brought against the inhabitants of Wyoming during the time therein mentioned:*

WHEREAS, Commissioners duly authorized and appointed, agreeable to the ninth article of the Confederation of the United States, to hear and determine the controversy between the Commonwealth of Pennsylvania and the State of Connecticut, have adjudged and decreed, that the jurisdiction and pre-emption of all the territory lying within the charter boundary of Pennsylvania, and claimed by the State of Connecticut, do of right belong to the State of Pennsylvania:

And whereas, This House, taking into consideration the situation of the present settlers under the late claim of the State of Connecticut, at that part of Wyoming eastward and northward of Nescopeck Falls, on the East Branch of Susquehanna, have agreed to send commissioners to make inquiry into the cases of the said settlers, and to encourage, as much as possible, reasonable and friendly compromises between the parties claiming, and, therefore, it is highly improper that any proceedings at law should be had for the recovery of any lands or tenements during the said inquiry;

Be it therefore enacted, &c., That every writ and process whatever granted, or issued, or which may hereafter be granted or issued for any owner or owners, claimant or claimants, against any person being now an inhabitant on said lands at Wyoming, in order to dispossess any of the said inhabitants or settlers of the lands or tenements in his, her, or their occupancy, shall be and the same are hereby declared to be stayed, and on motion, all further proceedings thereon shall be quashed by the court

to which such writ shall be returnable, until the report of the said Commissioners shall be laid before this House, and order shall be taken thereupon.

And be it further enacted by the authority aforesaid, That this act shall be and continue in force until the end of the next sitting of General Assembly, and no longer.

The garrison of Continental troops had been previously withdrawn. Their places were now supplied with two companies of State troops, under Captains Robinson and Shrawder. The presence of these troops was a cause of great anxiety to the settlers.*

On the 15th of April the commissioners arrived. In their first communication to the "Committee of Settlers," 19th April, 1783, they make the ominous declaration: "*Although it cannot be supposed that Pennsylvania will, nor can she, consistent with her Constitution, by any ex post facto law, deprive her citizens of any part of their property legally obtained, yet,*" &c.

This was pretty fair notice of expulsion. Judge John Jenkins† replied in behalf of the settlers, by a dignified but passionless recital of their rights and claims much more worthy of the sturdy settlers than the petition referred to. The "Committee of Pennsylvania Landholders," Alexander Patterson, chairman, now came forward with their terms of what they called "the conditions of compromise." That the commissioners should have indorsed them is beyond belief. They were: "We propose to give leases with covenants of warranty for

*Timothy Pickering says:

"Early in the year 1783, (just after the decree of Trenton,) council ordered two companies of rangers (Robinson's and Schrawder's) to repair to Wyoming; whether really to protect that country against the Indians, or to curb the Connecticut settlers, may perhaps admit of a question; if for the latter purpose it will not be difficult to guess at whose instance those troops were sent thither; certain it is that the Connecticut settlers did not send for them for one purpose or the other. But these rangers were enlisted *only during the Indian war*. Therefore, on the 22d of September, 1783, the Assembly resolved to raise a *regular force*, consisting of one major, two captains, and four subalterns, and *two full companies* of the soldiers who had served in the *Pennsylvania line*, to serve during such time as to the Council or Assembly should seem meet.

"This, it would seem, was ostensibly to protect the New England settlers at Wyoming against the Indians, *after the Indian war had ceased*! But on the 25th of February, 1785, the design is explained, that this armament was 'to suppress the disorders at Wyoming.'

"The excesses and outrages committed by these troops being disavowed by government, we must necessarily conclude that they were perpetrated at the instigation of Pennsylvania claimants."

†Judge John Jenkins bore a leading part in the history of this settlement. He was sent by the Susquehanna Company to make the first surveys in 1754, was the first provisional judge and a member of the Connecticut Colonial Assembly from Westmoreland.

Colonel Jenkins, his son, early enlisted in the Continental line, was a prisoner at Niagara, participated in the massacre of Wyoming, was the guide of General Sullivan's expedition, and present at the surrender of Cornwallis at Yorktown. He was a man of calm judgment. In all the struggles after the Decree of Trenton, he was faithful and true to his party. He was the writer for the settlers, and most of the memorials, petitions, and remonstrances were the work of his pen.

Hon. Steuben Jenkins, the grandson of Col. Jenkins, lives at Wyoming, on the very battle-field. Mr. Jenkins has accumulated a mass of papers, manuscripts and records covering this epoch that leave nothing to be desired, except that he put them in form and give them to the public, faithfully and intelligently, as he is fully qualified to do.

holding their possessions *one year from the first day of April instant, (22d April, 1783,) at the end of which time they shall deliver up full possession of the whole, * * * * ** and if they have any opportunities of disposing of their *huts, barns, or other buildings, they shall have liberty to do it. * * * * ** *The widows of all those whose husbands were killed by the savages, to have a further indulgence of a year after the first of April, 1784, for half their possessions."*

Patterson was determined "to feed fat the ancient grudge he bore them."

Judge Jenkins replied the same day: "As we conceive that the proposals of the committee, which they offer as a compromise, will not tend to peace, as they are so far from what we deem reasonable, we cannot comply with them without doing the greatest injustice to ourselves and our associates, to widows and fatherless children; and *although we mean to pay due obedience to the constitutional laws of Pennsylvania, we do not mean to become abject slaves*, as the Committee of Landholders suggest in their address to your honors."

The commissioners divided Wyoming into three townships, the new ones being named Stokes and Shawanese. Justices of the peace were elected by Patterson and his associates without notice to or participation by the inhabitants, they not yet being freeholders and voters in Pennsylvania.

The commissioners reported to the Assembly which convened in August, 1783. They recommended *to the families of those who had fallen in arms against the common enemy, reasonable compensation in land in western Pennsylvania, and to the other holders of Connecticut titles who "did actually reside on the land at the time of the decree at Trenton, provided they delivered possession by the 1st day of April following."*

Now Pennsylvania began to vacillate in her policy.

The Assembly approved all their suggestions.

The division of Wyoming into three townships was also approved.

The "act to prevent and stay suits" was repealed 9th September, 1783.

Two full companies of soldiers "who have served in the Pennsylvania line," were enlisted. Captain Patterson, now a justice of the peace, returned full of zeal. He changed the name

of Wilkes-Barre to Londonderry. For protesting against the rudeness and licentiousness of the soldiery, he arrested Colonel Zebulon Butler, then just returned from service in the Revolutionary army. Him he sent to Sunbury, charged with high treason. In Plymouth, he arrested many respectable citizens, feeble old men, whose sons had fallen in the massacre, Prince Alden, Captain Bidlack, Benjamin Harvey, Samuel Ransom, Captain Bates and others, greatly beloved by their neighbors. They were kept in loathsome prisons, starved, and insulted. They were dispossessed, and Patterson's tenants put into their places. The unhappy husbandman saw his cattle driven away, his barns on fire, and his wife and daughters a prey to licentious soldiery.

The people, outraged, petitioned the Assembly. It sent a committee to take testimony. Daniel Clymer, of Berks, one of the committee, rose in his place and said "there was evidence enough to show that Alexander Patterson ought to be removed."

General Brown, another member of the committee, said "he was certain no member of the House could imagine him in the interests of the people of Wyoming, beyond the bounds of truth and the desire to do justice. He had visited Wyoming as one of the committee on the subject, and had heard all the evidence on both sides. The wrongs and sufferings of the people of Wyoming he was constrained to declare were intolerable. If there ever was on earth a people deserving redress, it was those people." But Patterson was sustained by the Assembly.

At the opening of 1784, matters reached a crisis. I quote Chapman, writing in 1818, a trustworthy chronicler: "The inhabitants finding, at length, that the burden of their calamities was too great to be borne, began to resist the illegal proceedings of their new masters, and refused to comply with the decisions of the mock tribunals which had been established. Their resistance enraged the magistrates, and on the 12th of May, the soldiers of the garrison were sent to disarm them, and, under this pretense, one hundred and fifty families were turned out of their dwellings, many of which were burned; and all ages and sexes reduced to the same destitute condition. After being plundered of their little remaining property, they were driven from the valley, and compelled to proceed on foot through the wilderness by way of the Lackawaxen to the Delaware, a distance of

eighty miles. During the journey the unhappy fugitives suffered all the miseries which human nature seemed capable of enduring. Old men, whose children were slain in battle, widows with their infant children, and children without parents to protect them, were here companions in exile and sorrow, and wandering in a wilderness where famine and ravenous beasts continued daily to lessen the number of sufferers."

In March, of that year, a flood in the Susquehanna had swept the lowlands, carrying houses and fences all away. Patterson seized the opportunity, with land lines thus obliterated, to dispossess the occupiers, restore the lines of Pennsylvania surveys, and thus bring about the cruel and pitiful exodus just referred to.

He shall tell his own story: "The settlements upon the river have suffered much by an inundation of ice, which has swept away the greatest part of the grain and stock of all kinds, so that the *inhabitants are generally very poor*. Upon my arrival at this place, (Wyoming,) the 15th instant, (April, 1784,) I found the people for the most part disposed to give up their pretensions to the land claimed under Connecticut. *Having a pretty general agency from the landholders of Pennsylvania*, I have *availed myself of this period*, and have possessed, *in behalf of my constituents*, the chief part of all the lands occupied by the above claimants, numbers of them going up the river to settle, and filling up their vacancy with well disposed Pennsylvanians, * * * * yet I am not out of apprehension of trouble and danger arising from the ringleaders of the old offenders, &c." (By "ringleaders" he means such men as Butler, Ross, Denison, Dorrance, Shoemaker, Jenkins, Franklin, Slocum, Harvey, &c., &c.) By the 1st of June, he had made pretty clean work of it, and this without trial or verdict or other process of law.

Wherever news of this outrage reached, indignation was aroused, and no where more generously than in Pennsylvania. The troops were ordered to be dismissed. Sheriff Antis, of Northumberland county, which then included Wyoming, went to restore order. Messengers were dispatched to recall the fugitives. But they found Justice Patterson still flaming with wrath, and went into garrison near Forty Fort. Two young men, Elisha Garrett and Chester Pierce, having been slain by Patterson's men, while proceeding to gather the crops, the settlers rallied

for serious hostilities. John Franklin organized what effective men he could find. He swept down the west side of the Susquehanna and up the east side, dispossessing every Pennsylvania family he found. He attacked the fort to which they fled, was repulsed with loss of several lives on each side, and returned to the Kingston fort. Civil war now openly prevailed. (Forty of the Pennsylvania party were indicted at Sunbury, and subsequently convicted for their participation in expelling the inhabitants.) Other magistrates, Hewitt, Mead, and Martin had been sent to open negotiations. They demanded a surrender of arms from both sides. In their report to the president and members of the Supreme Council, under date of August 6, 1784, they say: "In obedience to the instructions of council of the 24th of July, we repaired to this place, (Wyoming,) and found the Pennsylvania and Connecticut parties in actual hostilities, and yesterday made a demand of the Connecticut party of a surrender of their arms, and submission to the laws of the State, *which they complied with.* We also made a demand of the same nature of the party in the garrison, but have received no direct, but an evasive, answer. * * * * * As to the pretended titles of the Connecticut party we have nothing to fear, and *are convinced that had it not been through the cruel and irregular conduct of our people, the peace might have been established long since, and the dignity of the government supported.*"

Again, under date of August 7th: "We have dispersed the Connecticut people, *but our own people we cannot.*"

The "party in the garrison" consisted of Patterson and such troops as had enlisted under him in the interests of the Landholders, without any warrant of law. When Patterson refused to surrender, the Connecticut people were permitted to resume their arms. At this stage, Colonels Armstrong* and Boyd appeared with a force of four hundred militia from Northampton county. By a piece of the most absolute treachery,† he procured

*General John Armstrong, junior, had a remarkable and eventful career. A Secretary of Pennsylvania, the author of "The Newburg Letters," the mouth piece of the dissatisfied officers at the close of the Revolution, a United States Senator from New York, Minister to France, and Secretary of War under President Madison; he died April 1, 1843, aged 85.

† Miner thus relates this circumstance: "A conference having been opened with the Connecticut party, serious doubts and misgivings existed in the hearts of several of the Yankee leaders who had so far experienced, as they said, nothing but oppression and treachery; but Colonel Armstrong pledged his faith, as a soldier, and his honor, as a gentleman, that Patterson's party should also be disarmed, and equal protection should be extended to all. They paraded; were ordered to "ground arms;" they were then commanded "right about, march ten steps, halt, right about!" which they obeyed, when Colonel Armstrong ordered his men to advance, and take up the grounded arms.

the surrender of the Yankees, and marched them, sixty-six in all, bound with cords, and under circumstances of great cruelty, to jail at Easton and Sunbury.* The conquest was complete. "The only difficulty that remained was how to get rid of the wives and children of those in jail, and of the widows and orphans whose husbands and fathers slept beneath the sod."

Colonel Armstrong was now confronted, to his surprise, by the censure of the State authorities. The "council of censors"† looked into the case, and took action. Frederick A. Muhlenberg was president. This body had just been chosen under the Constitution of 1776, and it was their duty "to inquire whether the Constitution has been preserved inviolate in every part, and whether the legislative and executive branches of the government have performed their duty as guardians of the people, or assumed to themselves, or exercised, other or greater powers than they are entitled to by the Constitution."

In September, 1784, they delivered the following solemn denunciation of the measures pursued against the Wyoming settlers:

"IN COUNCIL OF CENSORS, *September 11, 1784.*

"It is the opinion of this Council, that the decree made at Trenton early in 1783, between the State of Connecticut and this Commonwealth, concerning the territorial right of both, was favorable to Pennsylvania. It likewise promised the happiest consequences to the confederacy, as an example was thereby set, of two contending sovereignties adjusting their differences in a court of justice, instead of involving themselves, and perhaps their confederates, in war and bloodshed. It is much to be regretted that this happy event was not improved on the part of this State, as it might have been; that the persons claiming lands at and near Wyoming, occupied by the emigrants from Connecticut, now become subjects of Pennsylvania, were not left to prosecute their claims, in their proper course, without the intervention of the Legislature; that a body of troops was enlisted, after the Indian war had ceased, and the civil government had been established, and stationed at Wyoming, for no other apparent purpose than that of promoting the interest of the claimants under the former grants of Pennsylvania; that these troops were kept up and con-

Thus far was according to their expectations; but their surprise was merged in the bitterest mortification when Colonel Armstrong gave rapid orders—as rapidly obeyed—to surround the disarmed settlers, and make them all prisoners. Resistance was vain, and escape hopeless. Not a musket was taken from Patterson's forces, but they beheld the successful treachery of Colonel Armstrong with unrestrained delight and taunting exultation."—*History of Wyoming*, 354.

* Among them Jehoida P. Johnson, whose son, Ovid F. Johnson, was afterwards Attorney General of Pennsylvania, under Gov. Porter.

† Composed at this time as follows: Philadelphia city, George Bryan, Thomas Fitzsimmons; Philadelphia county, Frederick A. Muhlenberg, Arthur St. Clair; Bucks county, Joseph Hart, Samuel Smith; Bedford county, Daniel Espy, Samuel Davidson; Chester county, Anthony Wayne, James Moore; Lancaster county, John Whitehill, Stephen Chambers; York county, Thomas Hartley, Richard McAllister; Westmoreland county, John Smiley, William Findley; Cumberland county, James McLane, William Irvine; Berks county, James Read, Baltzer Gehr; Northampton county, John Arndt, Simon Dreisbach; Washington county, James Edgar, John McDowell; Northumberland county, William Montgomery, James Potter.

tinued there, without the license of Congress, in violation of the confederation; that they were suffered, without restraint, to injure and oppress the neighboring inhabitants, during the course of the last winter; that the injuries done to these people excited the compassion and the interposition of the State of Connecticut, who thereupon demanded of Congress another hearing, in order to investigate the private claims of the settlers at Wyoming, formerly inhabitants of New England, who, from this instance of partiality in the army, might have been led to distrust the justice of the State, when, in the meantime, numbers of these soldiers and other disorderly persons, in a most violent and inhuman manner, expelled the New England settlers beforementioned, from their habitations, and drove them towards the Delaware, through unsettled and almost impassable ways, leaving these unhappy outcasts to suffer every species of distress; that this armed force, stationed, as aforesaid, at Wyoming, as far as we can see, without any public advantage in view, has cost the Commonwealth the sum of £4,460, and upwards, for the bare levying, providing and paying them, besides other expenditures of public money; that the authority for embodying these troops was given privately, and unknown to the good people of Pennsylvania, the same being directed by a mere resolve of the late House of Assembly, brought in and read the first time on Monday, September 22, 1783, when, on motion, and by special order, the same was read a second time, and adopted; that the putting this resolve on the secret journals of the House, and concealing it from the public after the war with the savages had ceased, and the inhabitants of Wyoming had submitted to the government of the State, sufficiently marks and fixes the clandestine and partial intent of the armament, no such caution having been thought necessary, in defense of the northern frontiers, during the late war; and, lastly, we regret the fatal example which this transaction has set, of private persons, at least equally able with their opponents, to maintain their own cause, procuring the influence of the Commonwealth in their behalf, and the aid of the public treasury; the opprobrium which has from hence resulted to the State, and the dissatisfaction, and prospect of dissensions, now existing with one of our sister States; the violation of the confederation, and the injury done to such of the Pennsylvania claimants of land at Wyoming, occupied as aforesaid, as have given no countenance to, but, on the contrary, have disavowed these extravagant proceedings. *In short, we lament that our Government has, in this business, manifested little wisdom or foresight, nor have acted as the guardians of the rights of the people committed to their care. Impressed with the multiplied evils which have sprung from the improvident management of this business, we hold it up to censure, to prevent, if possible, any farther instances of bad government, which might involve and distract our new-formed nation."*

The Executive Council paid no heed to the censure nor to the advice of President Dickinson. A fresh levy of troops was ordered. The militia of Bucks, Berks, and Northampton refused to march.* Armstrong hastened to Wyoming with less than a hundred men in October. He promptly attacked the settlers in their fort, at Kingston, without success. William Jackson, a Yankee, had been wounded. Captain John Franklin seized Jackson's rifle, bloody from his wound, and swore a solemn oath "that he would never lay down his arms until death should

* "We everywhere met the following objections: 'That it was a quarrel of a set of land jobbers; that the whole country was not worth the life of a single man, or the labor of the many who were now called out to quiet it, and that they were drawn forth not merely to support the laws, but to extirpate the whole race of Connecticut claimants.'"—Colonel Armstrong to President Dickinson, 7th August, 1784.

arrest his hand, or Patterson and Armstrong be expelled from Wyoming, and the people be restored to their rights of possession, and a legal trial guaranteed to every citizen by the Constitution, by justice and by law."

General Armstrong went on to dispossess the families who had returned to their farms. All these proceedings led up to the passage of the act of Assembly of September 15, 1784, entitled "An act for the more speedy restoring the possession of certain messuages, lands, and tenements in Northumberland county, to the persons who lately held the same," under which the settlers were once more let into some assurance.

Armstrong and Patterson were recalled. "Thus ended the last expedition fitted out by the government of Pennsylvania to operate against her own peaceful citizens," and "the second Pennamite war."

I shall not attempt to distribute the responsibility between Patterson and the garrison on one side, and Franklin and his men on the other.

The few real Pennsylvania improvers had a sufficiently unhappy life of it.* They were subjected to great hardships, and,

* The three lists following, it is believed, embrace the names of all the resident claimants and the tenants of non-resident claimants, under Pennsylvania.

List of the Men who have been shut up in the Garrison at Wyoming.

Luke Brodhead,
James Melvin,
Daniel McLaskey,
Joseph Cavana,
Joseph Marshal,
Abn. Courtright,
Elisha Courtright,
John Courtright,
Ezekiel Schoonover,
Peter Cousan,
Saml. Vangorder,
Enos Randle,
Lawrence Kinney,
Garret Shoemaker, Jun.,
Jacob Tilberry,
Abn. Tilberry,
Peter Stagg,
Jacob Cramer,
Jacob Klyne,
David McCartney,
John Lasley,
Robert Clark,
Gabriel Ogden,
Geo. Tanner, Jun.,
Joseph Montancy,
James Covert,
John Potman,
James Johnston,
Ephm. Van Orman,
Isaac Van Orman,
John Van Orman,
Henry Wynn,
Obediah Walker,

Jacob Woodcock,
Richard Woodcock,
James Culver,
Isiah Culver,
Preserved Cooley,
Peter Taylor,
Silas Taylor,
Ebenezer Taylor,
Benj. Hillman,
William Sims,
William McKinney,
William Miller,
John Hillman,
Alex. Hoover,
Abn. Hammond,
Alex. Strickland,
Jacob Van Horn,
Geo. Yoman,
John Pinsell,
Daniel Swartz,
Joseph Biggers,
John Boreland,
George Tanner,
Edward Cavana,
Garratt Shoemaker,
James Stagg,
Richard Savage,
Lawrence Osbourne,
Patrick Dunlevey,
Joseph King,
Nicholas Brink,
— Juba.

WYOMING, August 8, 1784.

[Penn. Arch. Vol. X., p. 331.]

if you please, outrages. I do not forget the unfortunate encounter in Plymouth, in July—the lamentable affair at Locust Hill, with Major Moore's command, in August—the indignity offered to Colonel Boyd, a Pennsylvania commissioner, in September—nor the attack on 26th September on the commissioners, (disclaimed by Franklin and his party,*)—nor the final attack on "the garrison," in which Henderson and Reed were shot.

By the 1st October, 1784, the condition of affairs was deplorable, but "the thing was settled," and the agony over. Let a witness of each party bear his testimony.

List of those who had Entered Bail to answer at the Supreme Court to their Indictments for dispossessing Yankee Settlers, in May, 1784.

Ebenezer Taylor,
Silas Taylor,
Joseph Matania,
Samuel Van Gordon,
Helmus Van Gordon,
James Brink,
John Cortright,
Benjamin Hillman,
Martin Tidd,
Daniel Swartz,
Isalah Colver,
James Colver,
Isaac Clinkfoos,
Joseph Solomon,
Ezekiel Schoonhover,*
Henry Brink,
Tunis Coober,
William Brink,
John Borien,

Abr'm Vn Cortright,
Elisha Cortright,
Benajah Monday,
Jacob Tlighbury,
Henry Shoemaker,
And'w Henderson,
John Seely,
Alex'r Patterson,
Sam'l Reed,
B. W. Ball,
Luke Brodhead,
Lawrence Kinney,
Preserved Cooley,
Robert Biggars,
Gabriel Ogden,
David Ogden,
Jacob Kline,
Rudolph Litz,
William McDonald.

[Penn Arch. Vol. X., p. 650.]

"List of Affidavits taken at Wyoming, 1784." Depredations and threats at Wyoming against Pennsylvania Claimants.

Abm. Goodwin,
Jonathan Marsh,
Anthony Benscoto,
Mary Kory,
John King,
Eliz. Van Orman,
Garrit Shoemaker,

Catherine Sims,
Lois King,
Hanna Schonhover,
Isaac Taylor,
Mary Long,
John Cary,
John Craven.

Concerning the Attack at Locust Hill.

Charles Monro,
Eliphalet Emmons,

Silence Emmons,
John Patnors.

Attack on the Garrison at Wyoming.

Brink & Van Gordon,
Henry Burney,
Leah Vangardner,
James Lardner,

Pamella Taylor,
Catharine Cortright,
Wm. Hartman,
Samuel Karr.

[Penn. Arch. Vol. X., p. 653.]

It will be observed that the same names occur in the lists quite frequently.

*"If they had Ransacked the Regions of Darkness and consulted the Infernal Powers of Hell, they could not fram'd a greater falsehood than the laying the first alarm to the Connecticut party; but Patterson and his associates are so fastid and Prolific in the lying way that they would deceive the very elect, if it were possible, and overturn and subvert the foundation of Government.

We do most solemnly and in the name of the Great Jehovah, who is the searcher of hearts, say, that the Connecticut party (as we are called) had no hand in the first alarm, and knew nothing of the affair, directly or indirectly, and that we stand ready to prove our innocence, and show to the impartial world the abuses and insults we have received from Patterson and those called the Pennsylvania party, the injustice, rapine, plunder and murder, together with every species of cruelty," &c.—X. Penn. Arch. 673.

Colonel Armstrong:

"Appearances which presented themselves were such as begot but few hopes of being able *by gentle methods* to extinguish a flame which has extended itself to a whole people, composed as they are of vagrants and desperadoes."—*Letter to President Dickinson, November, 1784.*

Colonel Boyd and others:

"We beg leave to close this representation by offering to Council the result of our inquiries into the character of the people called Connecticut claimants. With very few exceptions, they appear to be a banditti, who, having fled from the operation of other laws are very unwilling to submit to the restraint of ours, and who are without any well founded pretensions to either property or reputation."—*Letter to President Dickinson, October, 1784.*

Judges of the Supreme Court:

"It was their opinion that a line of *mere defensive conduct*, on the part of the State, held out a promise of sooner bringing about the objects of government, than one of a *more active nature*."—*Armstrong's Report to President Dickinson, November, 1784.*

(This is a decidedly delicate way of putting the case.)

Alexander Patterson:

"You will no doubt hear that great outrages have been committed by the Pennsylvanians against the Connecticut claimants in violation of law and good government, but I trust it will be made to appear that the measures taken, *though not strictly consonant with the letter of the law*, were the result of absolute necessity, and dictated solely by the principles of self-preservation, for certain it is that no human policy could govern or reconcile both parties to remain, peaceably, in this country."—*Letter to Judges of Supreme Court, May 30, 1784.*

Per Contra.

Zebulon Butler, Nathan Denison, and others:

"The said banditti and soldiers are now wantonly, without either right or law, pulling down our fences, laying our fields and grain open to the wide world, fencing across our highways, inclosing our gardens and home lots for their own use, * * * continually walking the streets, and through every part of our settlement that is any way near the garrison, as well by night as day; some armed with guns and bayonets, and others with clubs, insulting and assaulting whomsoever they please."—*Petition to Congress, May, 1784.*

John Franklin and others:

"Insults and abuses that the Connecticut party are daily receiving by being confined in the garrison by Patterson and his party, without law or justice. * * * Our petitions, remonstrances, and addresses, have been repeated to your honorable body, and the House of Assembly, until our patience is worn out, and no relief granted us. We have asked for justice, and we declare to God, who knows our hearts, that justice is all we wish for. Our prayers and entreaties appear finally to be rejected and condemned—and we have reason to believe that there is no good designed for us from this State. Wishing your honorable body to be under the guidance and benediction of Almighty God, we say, amen."—*Petition to President and Supreme Executive Council, October, 1784.*

Jonathan Marsh swears:

"That he heard Henry Antis [sheriff of Northumberland county] say

'he had ordered the Yankees to come home, and take their respective possessions as heretofore, and ordered them to go to harvesting the grain and cutting the hay;' and further said '*he had ordered the Yankees to take their arms for men was not to stand still and be killed.*'"—*Deposition 12th August, 1784.*

John Casy swears :

"The day after the skirmish at Shawnee, I heard several of the Connecticut party say that they did not see how they could have any benefit of the law—they have tried its rule—and they would now try if they could not make law come."—*Deposition 11th August, 1784.*

"Two years have now elapsed since the transfer of jurisdiction by the Trenton decree. Peace, which waved its cheering olive over every other part of the Union, healing the wounds inflicted by ruthless war, soothing the sorrows of innumerable children of affliction and kindling the lamp of hope in the dark chamber of despair, came not to the broken-hearted people of Wyoming. The veteran soldier returned, but found no resting place. Instead of a joyous welcome to his hearth and home, he found his cottage in ruins or in possession of a stranger, and his wife and little ones shelterless in the open fields or in the caves of the mountains; like the sea-tossed mariner approaching the wished for harbor, driven by adverse winds far far from shore, to buffet again the billows and the storm. It is true and honorable to those who effected it, that the New England people were repossessed of their farms, but a summer of exile and war had left them no harvest to reap, and they returned to their empty granaries and desolate homes crushed by the miseries of the Indian invasion; mourners over fields of more recent slaughter, destitute of food, with scarce clothing to cover them through the rigors of a northern winter, while clouds and darkness shrouded all the future. Assuredly the people of Wyoming were objects of deepest commiseration, and the heart must be harder and colder than marble that could look upon these sufferings and not drop a tear of tenderest pity."—*Miner.*

We have had occasion to notice the failure of the claimants under the Susquehanna Company to get a new tribunal appointed by Congress to try their case under the Articles of Confederation. Colonel Franklin had been active and untiring in his efforts to that end. Upon their failure, he went to Connecticut to see his old friends and to stir them to some new and dangerous enterprise. He pointed out the richness and beauty of the valley of Wyoming; the wrongs of her people; the failure of Pennsylvania, with all her machinery, to oust a handful of set-

tlers. "A chord was struck that vibrated through all New England. Franklin, in the spirit of his oath, infused his own soul, glowing with resentment and ambition, into the people with whom he conversed; and had not his schemes been counteracted by a timely and prudent change of policy on the part of her authorities, Pennsylvania had lost her fair northern possessions, or, by a new civil war, extinguished the Connecticut claim in blood."

Mischief was in the wind. Justice David Meade was about the last Pennsylvania claimant left in possession, although he was one of the earliest Connecticut settlers. He was one of Patterson's justices, looked upon as a traitor from the Yankee ranks and a spy on the people. Rising one morning, he found a dozen men mowing his meadows.

Said one: "Squire Meade, it is you or us. Pennamites and Yankees can't live together in Wyoming. Our lines don't agree. We give you fair notice to quit, and that shortly." It illustrated the situation. He was the last Pennsylvania claimant on the Wyoming lands.*

The Susquehanna Company was re-convened at Hartford, on July 13th, 1785. Its proceedings were significant, and embraced a substantial declaration of war. Pennsylvania had been a vigilant observer of events. On the 24th December, 1785, she passed "An act for quieting disturbances at Wyoming, for pardoning certain offenders, and for other purposes therein mentioned."

A general pardon and indemnity was offered for offenses committed in the counties of Northumberland and Northampton, in consequence of the controversies between the Connecticut claimants and other citizens of the State, before the 1st of November, 1785, provided the persons having so offended surrendered themselves before 15th April, 1786, and entered into bonds to keep the peace. It also repealed the act confirming the division of the townships of Shawanese, Stoke, and Wyoming into two districts for the election of justices of the peace, and annulled the commissions granted.

No great number of these settlers were in any humor thus to sue for pardon, and the law fell—a dead letter.

The Susquehanna Company met again in May, 1786. This time

* Meade was afterwards allotted extensive grants by Pennsylvania as indemnity for his losses in Wyoming. Upon one of them he laid out and founded the town of Meadville, Crawford county. He made the original surveys in 1786, for the Susquehanna Company lands in the first five townships.

it rather chivalrously resolved to "*effectually* justify and *support* the settlers." In fact, the latter, while nominally under the laws of Pennsylvania, governed themselves. Sheriff Antis, of Northumberland county, had wisely "pocketed" most of the writs he held against them, unexecuted.

On the 25th of September, 1786, the county of Luzerne was erected. It embraced the lands settled by the New England emigrants. It gave them representation in the Council and the Assembly, and proved to be a wise measure. But, step by step, as Pennsylvania moved to close up the trouble, the Susquehanna Company went forward with its scheme of revolution.

On the 26th December, 1786, at its meeting in Hartford, it appointed the following ominous list of "Commissioners:" Major Judd, Samuel Gray, Joel Barlow, Oliver Wolcott, junior, Al. Wolcott, junior, Gad Stanley, Joseph Hamilton, Timothy Hosmore, Zebulon Butler, Nathan Denison, Obadiah Gore, John Franklin, Zerah Beach, Simon Spalding, John Jenkins, Paul Schott, Abel Pierce, John Bartle, Peter Loop, junior, John Bay, and Ebenezer Gray. These were well known names, and it was quite certain that what they responsibly undertook, would be done. They or any five of said commissioners "shall be a court with power, &c., * * * * *this power to determine whenever a form of internal government shall be established in that country.*"

General Ethan Allen was in the scheme, and actually appeared at Wyoming, in regimentals and cocked-hat, with the Green Mountain boys, fresh from their victory over New York, in reserve. The purpose was to erect the Connecticut claim in Pennsylvania into a NEW STATE.

They issued "half share" rights in great numbers, and new faces—strangers to the "old settlers"—began swarming into the Valley. The old-time residents had no sympathy with all this. They knew it prolonged the unhappy situation, and deprecated its effects. As a witness in *Vanhome vs. Dorrance* expressed it: "The half share men and the old settlers were a distinct people, and as much opposed to each other as to Pennsylvanians." On the 27th of December, 1786, an act was passed providing for the election of representatives, justices of the peace, &c., in Luzerne county. Timothy Pickering, Zebulon Butler, and John Franklin were appointed in the act to notify the electors, take oaths of allegiance, &c. Franklin, as we have

seen, had other views, and refused to act. Pickering had come as the special representative of the government of Pennsylvania. He was politic, and held to his definite purpose, wisely. Colonel Butler wished repose for his neighbors and himself. Colonel Pickering, as the result of a previous visit (unofficial) to this region, had reported to the State authorities "that the inhabitants expressed a willingness to submit to the government of Pennsylvania, provided they could have their lands confirmed to them."*

He then consulted eminent legal authority as to the *right* of the State to cede the lands to the Connecticut people, and, thereupon, "he undertook the laborious, the difficult, and, in the minds of many, the *hopeless* task of conciliating the minds of the Wyoming people. With his utmost efforts, during a whole month's diligent application, he barely succeeded, and solely by the expectations he persuaded them to entertain *that they would be confirmed in their possessions.*"

With these assurances, the great majority of the people were for submission. Three classes were opposed. A few, thoroughly imbued with the absolute rights of their case—filled with the glowing traditions of their struggles—wanted their possessions confirmed first, and submission afterwards. Pennsylvania claimants, of course, resisted: such of the Susquehanna Company's grantees as were outside the lines of "the seventeen townships:" and the new influx of "half share men."

Says Miner: "And now, for the first time, was presented the spectacle, equally gratifying to foes and painful to friends, of open and decided hostility among the Wyoming people. Whatever difference of opinion may exist in respect to the justice of their claims, no liberal mind could have traced their arduous course through toil and privation, through suffering and oppression, through civil and foreign war, and observed the fortitude, fellowship, and harmony among themselves that had prevailed, without a feeling of admiration for rare and generous virtues so signally displayed. In an equal degree was the mortification at the spectacle now presented. It was no longer 'Pennymite and Yankee,' but the 'old settlers' against 'the wild Yankees' or 'half share men.'"

* I quote from a lengthy and valuable manuscript of Colonel Pickering, now in possession of Honorable Steuben Jenkins, of Wyoming, Pa. It has never been in print. The document is a vigorous and eloquent protest against the repeal of the "Confirming Act."

The election went forward. John Franklin was chosen the member of Assembly; Nathan Denison, member of the Supreme Executive Council; and Lord Butler, high sheriff. Thus the county of Luzerne was fully organized.*

Forthwith, a long petition was sent to the Legislature then in session, setting forth that "seventeen townships, five miles square, had been located by the Connecticut settlers before the decree of Trenton," &c., and praying that "they might be confirmed in them."

On the 27th of March, 1787, "an act for ascertaining and confirming to certain persons, called Connecticut claimants, the lands by them claimed within the county of Luzerne, and for other purposes therein mentioned," was passed.†

* Named for Chevalier de la Luzerne, Minister from France to the United States.

† Votes on "Confirming Act," March 28, 1787.

Yeas.	County.
William Will,	City of Philadelphia.
Robert Morris,	City of Philadelphia.
Thomas Fitzsimons,	City of Philadelphia.
George Clymer,	City of Philadelphia.
Jacob Hillzheimer,	City of Philadelphia.
Isaac Gray,	County of Philadelphia.
William Robinson, Jun.,	County of Philadelphia.
John Salter,	County of Philadelphia.
George Logan,	County of Philadelphia.
Samuel Foulke,	Bucks county.
Gerardus Wynkoop,	Bucks county.
John Chapman,	Bucks county.
Valentine Upp,	Bucks county.
James Moore,	Chester county.
Richard Willing,	Chester county.
Robt. Ralston,	Chester county.
Samuel Evans,	Chester county.
Richard Thomas,	Chester county.
Townsend Whelen,	Chester county.
Alexander Lowrey,	Lancaster county.
Adam Hubley,	Lancaster county.
Joseph Work,	Lancaster county.
George Rosa,	Lancaster county.
David McConaughy,	York county.
Michael Schmyser,	York county.
David McClellan,	York county.
Joseph Sillie,	York county.
Henry Tyson,	York county.
Adam Elcheiberger,	York county.
Daniel Clymer,	Berks county.
Peter Trexler, Jun.,	Northampton county.
John Caux,	Bedford county.
Hugh H. Brackenridge,	Westmoreland county.
Charles Moore,	Montgomery county.
Samuel Wheeler,	Montgomery county.
Jacob Reiff,	Montgomery county.
Nays.	County.
Robt. Whitehill,	Cumberland county.
Thomas Beale,	Cumberland county.
Thomas Kennedy,	Cumberland county.
David Mitchell,	Cumberland county.
Gabriel Helster,	Berks county.
David Davis,	Berks county.
Robt. Brown,	Northampton county.
Peter Burkhalter,	Northampton county.
John Piper,	Bedford county.
Joseph Powell,	Bedford county.
Frederick Antes,	Northumberland county.

The preamble is in the words: "Whereas, before the determination of the claim of Connecticut, a number of its inhabitants, with their associates, settled upon and improved divers tracts of land, lying on and near the north-east branch of the river *Susquehanna*, and the waters thereof, and now within the county of *Luzerne*; and whereas, parts of the same lands have been claimed under titles derived from the late Proprietaries of Pennsylvania, and *those interfering claims have occasioned much contention, expense, and bloodshed*, and this Assembly being desirous of putting an end to those evils by *confirming such of the Connecticut claims as were acquired by actual settlers prior to the determination of said dispute*, agreeably to a petition of a number of the said settlers, and by granting a just compensation to the *Pennsylvania claimants*," &c. It enacted,

"That all the said rights or lots now lying within the county of *Luzerne* which were occupied or acquired by *Connecticut claimants who were actually settlers there, at or before the termination of the claims of the State of Connecticut by the decree aforesaid*, " (the decree of Trenton,) " and which rights or lots were particularly assigned to the said settlers prior to the said decree, agreeably to the regulations then in force among them, be and they are hereby confirmed to them and their heirs and assigns."

Then follows certain conditions on which the lands were to be "certified" to the owners. Pennsylvania claimants were provided for as follows:

SECTION 9. "*And whereas the late Proprietaries, and divers other persons, have heretofore acquired titles to parcels of the land aforesaid, agreeably to the laws and usages of Pennsylvania, and who will be deprived thereof by the operation of this act, and as justice requires that compensation be made for the lands of which they shall be thus divested; and as the State is possessed of other lands, in which an equivalent may be rendered to the claimants under Pennsylvania, and as it will be necessary that their claims should be ascertained by a proper examination; Be it therefore enacted, by the authority aforesaid, That all persons having such claims to lands which will be affected by the operations of this act, to present the same to the Board of Property, therein clearly describing those lands and stating the grounds of their claims, and also adducing the proper proofs, not only of their titles, but of their situations, qualities, and values of the lands so claimed, to enable the Board to judge of the validity of their claims, and of the quantitles of vacant lands proper to be granted as equivalents; and for every claim which shall be admitted by said Board as duly supported, the equivalent by them allowed may*

Samuel Dale,	Northumberland county.
William Findley,	Westmoreland county.
James Barr,	Westmoreland county.
Alexander Wright,	Washington county.
John McDowell,	Washington county.
John Flenniken,	Washington county.
James Allison,	Washington county.
Theophilus Phillips,	Fayette county.
John Gilchrist,	Fayette county.
Abraham Smith,	Franklin county.
Robt. Clark,	Dauphin county.
Jacob Miley,	Dauphin county.

be taken either in the old or new purchase, at the option of the claimant; and warrants, patents, and all other acts of the public officers relating thereto, shall be performed free of expense. The said Board shall also allow such a quantity of vacant land to be added to such equivalent, as shall, in their judgment, be equal to the expenses which must necessarily be incurred in locating and surveying the same. And, that the Board of Property may, in every case, obtain satisfactory evidence of the quality and value of the land which shall be claimed as aforesaid, under the Proprietary title, they may require the commissioners aforesaid, during their sitting in the county of Luzerne, to make the necessary enquiries, by the oaths or affirmations of lawful witnesses, to ascertain those points; and it shall be the duty of the said commissioners to enquire and report accordingly."

A great town meeting of the settlers was at once called to accept or reject this act. John Franklin prepared for a final rally against it. He literally preached against it from settlement to settlement, and from house to house. The assembly was held at Forty Fort—the first place the organized Connecticut settlers touched on their arrival, and, as it proved, the place where the last word was said. As might be supposed, the meeting was an excited one, and friend fell into wretched antagonism to friend. The act was accepted. Colonel Jenkins asked, "what security have we, that if we comply, and put ourselves in your power, the State wouldn't repeal the law, and deal as treacherously as in the case of Armstrong?"*

His question proved to be a bitter prophecy.

It was at this juncture that General Ethan Allen† appeared on the scene. Pickering well knew his object. Pickering and Franklin, each permitted no movement of the other to escape notice. The time for decisive action had come. Regarded as the head of the conspiracy, John Franklin was, on the second of October, 1787, arrested for high treason, under a warrant issued by Chief Justice McKean.‡

* See Appendix III.

† A grant of several thousand acres, called "Allensburg," had been made to him by the Susquehanna Company, in what is the present county of Bradford.

‡ Mr. Upham well says: "There was, at that period, pervading the country, a fearful disregard of the obligations of law, a wide spread insubordination to government in general. The public mind for years, during the Revolutionary war, while the Continent was in rebellion against the Crown, had to some extent, and in many quarters, been getting loose from the idea of political restraints, as was evidenced by insurrectionary proceeding in Massachusetts and elsewhere. * * * It is not to be wondered at, that frontiersmen, like the Connecticut settlers of Wyoming, should have been drawn into rebellion. * * * Their peculiar experience had led them to know no other sovereign than their own determined will. They had looked in vain, outside of their own narrow limits, for aid or for justice. Their strong arms and brave hearts had been proved, after many reverses, to be a sufficient wall of defense around them. And they felt that they always would be."

The sketch following is furnished to me by Edward Herriok, Esq., of Athens, Bradford county. If John Franklin was a "rebel," it must be remembered that "rebellion" had been quite a public fact for some years in the United States, just previous to 1784.

"Col. John Franklin was born at Canaan, Litchfield county, Connecticut, September 28, 1749; removed to Wyoming in the spring of 1774; was many years an acting magistrate under Connecticut; captain of an independent company during the Revo-

As Colonel Pickering had personally assisted in the arrest of Franklin, he deemed it prudent to flee to Philadelphia. While there, the people of Luzerne chose him a delegate to the Convention called to ratify the Constitution of the United States. It was a cordial testimony to their belief in ultimate justice at the hands of the State. Having discharged that duty, he returned to Luzerne, of which he was prothonotary, clerk of the peace, clerk of the orphans' court, register of wills, and recorder of deeds.*

Franklin was held in irons in Philadelphia. His adherents were not men to stand upon ceremony to procure his release. To that end, on the 26th of June, 1788, they kidnapped Pickering. He refused to intercede for Franklin, and in three weeks was released, uninjured. Blood was shed, for the last time, in an affair between his captors and their pursuers.

The acceptance of the "Confirming Law" and the arrest of Franklin, stopped the movement for the dismemberment of Pennsylvania.

The frame of government had been completed. The Constitution had been drawn up by Oliver Wolcott. Major William Judd, of Farmington, Connecticut, was to have been Governor, Colonel John Franklin, Lieutenant Governor. †

lutionary war, and, while attached to Sullivan's expedition against the Indians, was wounded in the attack on Chemung; member of the Assembly of Connecticut in 1781; in October, 1787, he was arrested on a charge of treason against the State of Pennsylvania, for "endeavoring to subvert the government, and to erect a new and independent State in the room and stead thereof;" was confined in Philadelphia nearly two years, a great part of the time heavily ironed, released on bail, and never brought to trial; in 1792 he was elected high sheriff of Luzerne county, while an indictment for treason was still hanging over him, was commissioned and served; in 1795, 1796, 1799, 1800, 1801, 1803, he was a member of Assembly from Luzerne county; by the act of April 2, 1804, a small portion of Luzerne county, including his farm, was set off to Lycoming county; this act was avowedly for the purpose of keeping him out of the Legislature, but in 1806 he again appeared in that body as a member from Lycoming; in 1789 he removed to his farm in Athens, (then Luzerne, now Bradford county,) which was laid out to him under Connecticut title, and there resided until his death, March 1, 1831; he never accepted or recognized a Pennsylvania title, but after his death, his heirs were required to purchase that title to his farm.

"In the settlement of northern Pennsylvania he was the recognized leader, making annual pilgrimages to New England, and bringing back hosts of industrious settlers, whose descendants, to this day, preserve the virtuous character of their puritan ancestry; the people whom he brought thither, he never forsook; their battles he fought in the courts, the assembly, in newspapers and pamphlets, and, if necessary, with his strong right arm, with a zeal, persistency, and fidelity which deserved for the cause he thought to be right, a better fate."

"...It is now more than three years since the subscriber (Pickering himself writes in 1793) was appointed to the office of prothonotary, and the other four offices usual in new counties, and it is two years and a half since the courts were opened, yet in all that time his receipts, in cash, he verily believes, do not exceed forty or fifty dollars!"

†Pickering says: "The Wyoming settlers had not, like the Vermontese, established their independency *in fact*, when the confirming law was passed. In both countries, they had contended in arms. The Vermontese at first settled their lands by virtue of grants from New Hampshire. New York claimed the same territory, and her Governors granted large tracts (to the amount, it would seem, of near half a million of acres) to her citizens, and the dispute was finally decided by the King in Council, in

The Act failed of execution. I give the account of Colonel Pickering of the causes of the failure. It silences many exaggerations of the conduct of the people, and tends to correct the errors in the *preambles* of the Acts—first suspending, and then repealing it:

"The conditions expressed in the contract, (he refers to the Act,) were complied with on the part of the Connecticut claimants, as far as it was *practicable*, and they were not bound to perform *impossibilities*: that eight months from the time of passing the act were allowed them to get information of it, and to present their claims: that the commissioners appointed to receive and examine those claims were required to meet, for that purpose, in Luzerne county, in two months next after the passing of the act: that owing to successive resignations of General Muhlenberg, General Heister, and Joseph Montgomery, Esquire, those examinations did not commence till some time in August: that the seizure of John Franklin, on the 2d of October, for his treasonable practices and designs, occasioned a sudden insurrection of his adherents, of whom a very small number had any pretensions to land under the confirming law: that a few days before this arrest, Colonel Balliot, one of the commissioners, had gone home to his family: that the subscriber, another of the commissioners, having personally, in sight of the people, and with arms in his hands, assisted in securing Franklin, and preventing any attempts to rescue him, and thus rendered himself obnoxious to the resentment and sudden vengeance of his partisans, was advised to retire to some secure place until their heat should subside: * * * * that Colonel William Montgomery, the other commissioner, seeing the storm gathering, immediately after Franklin was taken, had left the county to go home: * * * * that the commissioners

favor of New York. At first, the Green Mountain boys were few in number. The Yorkers sent troops to quell them. The Green Mountain boys withstood them, and, in the end, were victorious. The country touching some of the New England provinces, and being near to all, peopled rapidly. Had Wyoming, with its dependencies, been situated as near to the "northern hives," it would at this day have constituted another Vermont. There is not a citizen of the State more happy than I am in the reflection that the confirming law, among other of its good effects, put an end to the causes which were rapidly tending to produce such an event. This is not conjectural, but founded in fact, for the truth of which I appeal to His Excellency, the President of the State, who publicly declared that he was informed by General Parsons, of Connecticut, that he had abandoned a plan of settlement at Wyoming in great force on receiving intelligence of the confirming law. It is also well known that the accounts of the cruel treatment received from the Pennsylvania troops by the settlers at Wyoming, at a time when the Assembly of Connecticut was sitting, kindled resentments in that State which were with difficulty allayed, and which were not generally extinguished till the confirming law was passed."

having thus separated, never again assembled, the time limited for the presentation of the Connecticut claims expiring so soon after as the 28th of November, following. * * * * * that since this event, (referring to his own abduction,) the county has remained in perfect quiet, the laws having as free and complete operation as in any other county." Then arguing against the repeal of the act, (his paper is written 27th February, 1790 :) "That the people rely on the magnanimity and good faith of the State, for the execution of the grants made to them by the confirming law: that in this expectation their industry is manifestly increased, they have begun to build more comfortable houses, to erect barns, and to extend the improvements on their lands: that a repeal of the law would check this rising industry, stop further improvements, revive ancient jealousies and animosities, and, perhaps, destroy the peace of the country. But, to say nothing of the attempt, as a breach of public faith, it may be worth while to inquire, 'whether such repeal be in its nature possible?'" He goes on to treat the act as a "*contract*" or "*treaty of peace*."

The Landholders, however, were not without power in the Assembly. Using the conduct of the people as a cause or pretext, the act was suspended on the 29th March, 1788.*

*Vote on suspending "Confirming Law," March 29, 1788.
Yeas. County.

Valentine Upp,	Bucks county.
James Moore,	Chester county.
Alexander Lowrey,	Lancaster county.
James Clemson,	Lancaster county.
Jacob Erb,	Lancaster county.
Michael Schmyser,	York county.
William Mitchell,	York county.
David McClellan,	York county.
Joseph Reed,	York county.
Thomas Clingan,	York county.
David Mitchell,	Cumberland county.
Thomas Beale,	Cumberland county.
Thomas Kennedy,	Cumberland county.
John Oliver,	Cumberland county.
Joseph Helster,	Berks county.
Gabriel Helster,	Berks county.
David Davis,	Berks county.
Joseph Sands,	Berks county.
Phillip Kreemer,	Berks county.
Peter Trexler, jun.,	Northampton county.
Thomas Mawhorter,	Northampton county.
Peter Burkhalter,	Northampton county.
John Piper,	Bedford county.
Jacob Saylor,	Bedford county.
Samuel Macleay,	Northumberland county.
John White,	Northumberland county.
William Findley,	Westmoreland county.
James Barr,	Westmoreland county.
John McDowell,	Washington county.
James Allison,	Washington county.
Alexander Wright,	Washington county.
John Flenniken,	Washington county.

The preamble of the act is as follows :

"SECTION 1. WHEREAS, By an act entitled 'An act for ascertaining and confirming to certain persons, called Connecticut claimants, the lands by them claimed, within the county of Luzerne, and for other purposes therein mentioned,' it is, among other things, enacted, that certain commissioners therein named, or thereafter to be appointed, should, within a limited time, meet together within the said county, for the purpose of receiving and examining the claims of the said claimants, and ascertaining and confirming the same. *And whereas*, When these commissioners had met, in pursuance of the said law, they were interrupted in their proceedings by the combinations, threatenings, and outrageous violence of certain lawless people in the said county of Luzerne, and obliged to fly for the preservation of their lives. *And whereas*, Doubts have also arisen concerning the construction, true intent, and meaning of said law, for which, and other causes, it hath become very difficult to determine the same, and to adjust the compensation to be made to those persons who will be divested of their property by the operation of the said law, if the same shall be carried into effect. *And whereas*, The time in which these commissioners were to receive claims has expired, but their other powers still remain, which, if immediately executed, without further provisions and regulations being previously made, will tend to embarrassment and confusion." *Be it enacted, &c.*

Over-statements of the condition of affairs in Luzerne, the cross-purposes of the different interests, petitions for repeal, ill-defined views of the real scope of the act, clamor, and bad faith finally won the day. Under all this pressure, the act was finally repealed on the 1st of April, 1790. Its repeal was fought and resisted most strenuously by the members from Philadelphia—lawyers living in the very home of Penn—and many eminent men in and out of the Assembly. Especially the dissentients drawn

Theophilus Phillips,	Fayette county.
John Gilchrist,	Fayette county.
James McLene,	Franklin county.
James McCalmont,	Franklin county.
Jacob Reiff,	Montgomery county.
Robt. Lollar,	Montgomery county.
Benjamin Rittenhouse	Montgomery county.
Jacob Milley,	Dauphin county.
Robt. Clark,	Dauphin county.
John Carson,	Dauphin county.
<i>Nays.</i>	<i>County.</i>
George Clymer,	City of Philadelphia.
Thomas Fitzsimmons,	City of Philadelphia.
Jacob Hiltzheimer,	City of Philadelphia.
William Will,	City of Philadelphia.
William Robinson, Jun.,	County of Philadelphia.
John Salter,	County of Philadelphia.
George Logan,	County of Philadelphia.
Richard Peters,	Philadelphia.
Gerardus Wynkoop,	Bucks county.
John Chapman,	Bucks county.
Samuel Foulke,	Bucks county.
Robt. Ralston,	Chester county.
Richard Thomas,	Chester county.
Samuel Evans,	Chester county.
Townsend Whelen,	Chester county.
Adam Hubley,	Lancaster county.
Joseph Work,	Lancaster county.
John Hopkins,	Lancaster.
Joseph Lilley,	York county.
John Irvine.	
John Paul Schott,	Luzerne county.

by William Rawle* and William Lewis,† are so luminous that I give them in a note.

* DISSENTIENT from the vote adopting the report of the committee in favor of repealing the act, entitled "An act for ascertaining and confirming to certain persons, called *Connecticut claimants*, the lands by them claimed within the county of Luzerne, and for other purposes therein mentioned."

1st. Because we consider the act which the resolution adopted by the House proposes to repeal, to be either in the nature of an absolute or a conditional grant to the *Connecticut settlers*. If the latter, it has not yet been proved to our satisfaction, that the insurrection at Wyoming, which occasioned the commissioners to fly, proceeded from a general determination to resist the authority, and reject the bounties of this State, or from the turbulent dispositions of some of the adherents of *John Franklin*, who were incensed at his sudden and secret arrest; few of whom could derive any benefit from the law which the commissioners were then carrying into execution, and consequently it has not appeared with that clearness which the importance of the subject requires, that there has been any breach of implied condition of the law, viz: That the *Connecticut settlers* would submit to the authorities of the State.

2d. Because if the grant is absolute, it is obligatory upon the State, and can only be revoked upon the terms mentioned hereafter. We conceive that a law vesting an interest conveys the most (authentic) and (solemn) title that can be annexed to property, after which the State has not the same power over the law which it most unquestionably possesses over its own acts of another nature. But in no instance can the power of repealing laws affect their obligations while in force, and consequently, if the effect of the law while in force is permanent and perpetual upon the subject to which it relates, a repeal, although it may destroy the law, cannot diminish the effect it has already produced.

3d. Because, although it is universally conceded that private property may at any time be taken for public uses, yet it can only be so taken on condition of making full and adequate compensation to the private proprietor; and hence, it may follow that the State, from whatever motives, having conveyed the title to the lands in dispute, under certain terms and modifications to the *Connecticut settlers*, will at a future day be liable to make a more expensive compensation to those settlers, than the whole amount of the demands of the *Pennsylvania claimants*.

4th. Because it is introducing a most dangerous principle to repeal a law of any kind from an impression, however strong, that the Legislature was deceived at the time of passing the law. A law contrary to the Constitution may, and ought to be repealed; for in that instance there is a certain guide, which, although it may be disobeyed, cannot be misunderstood. But to pass our own judgment in a legislative manner upon the sufficiency of the motives which induced a former Assembly to enact a law of the nature of that which it is now proposed to repeal, and to collect these motives from other sources than the law itself, appears to us to endanger the authority even of our own proceedings, by rendering them liable at a future day to be subverted in the same manner, with perhaps still less evidence than we have to proceed on. And it will directly tend to destroy the order, safety, and happiness derived from civil society; for as the obligation of the laws is rendered less solemn and conclusive, the Legislature will naturally become less impressed with their importance, and the people will gradually learn to disregard their authority.

(Signed)

WILLIAM RAWLE,
RICHARD THOMAS,
RICHARD DOWNING, Jr.,
LAWRENCE SICKLE,
JONATHAN ROBERTS,
JACOB HILTSHIMER,
HENRY DENNEY,
SAMUEL ASHMEAD,
OBADIAH GORE,
HERMAN HERSHARD.

† DISSENTIENT from the vote for enacting the law, entitled an act to repeal an act, entitled "An act for ascertaining and confirming to certain persons, called *Connecticut claimants*, the lands by them claimed in the county of Luzerne, and for other purposes therein mentioned."

1st. Because the passing of the bill into a law in the same session in which it originated, and within eight days after it was first read to the House, is beyond all example heretofore furnished by the rage or folly of party, a flagrant violation of the Constitution, which declares that "to the end that laws before they are enacted, may be more maturely considered, and the inconvenience of hasty determination as much as possible prevented, all bills of a public nature shall be printed for the consideration of the people, before they are read in General Assembly, the last time for debate, and except on occasions of sudden necessity, shall not be passed into laws until the next session of Assembly." That this bill was of "a public nature," all who have understanding to comprehend, and candor to acknowledge the obvious meaning of words, must confess; inasmuch as the compensation to be made to the *Pennsylvania claimants*, related to the whole State, and affected all its members; and no one will have the effrontery to say, that any "occasion of sudden necessity" had occurred for dispensing with the express provisions of the Constitution.

The act is as follows:

"SECT I. WHEREAS, An act of Assembly, enacted the twenty-eighth day of March, one thousand seven hundred and eighty-seven, entitled 'An act for ascertaining and confirming to certain persons, called Connecticut Claimants, the lands by them claimed within the county of Luzerne, and

This wanton precipitation in passing the bill, is inconsistent with its preamble, in which one motive assigned for the repeal of the confirming law is, that it was passed hastily, and without due consideration had, and another contradiction equally glaring is, that after stating that the said act divested many citizens of this State of their lands, without their consent, *and without making them any just compensation*, it assigns as a reason for the repeal, that the carrying said act into effect would impose a grievous burthen on the good citizens of this State, to *make compensation* to those who would thereby be divested of their property.

The Constitution further declares, "that for the more perfect satisfaction of the public, the reasons and motives for making laws, shall be fully and clearly expressed in the preambles." Whatever might be the reasons and motives for passing the bill, the facts assumed in the preamble, but which were neither proved nor admitted, seem to have been intended to give color to a proceeding which stood in need of it, if not to bring reproach on a former House, equally respectable at least with the present one for wisdom and virtue.

2d. Because the House had no proper evidence in support of the allegations contained in the preamble, and refused to inquire either in the House or in committee of the whole House, whether they were true or not. In a measure highly interesting to the honour, dignity, and justice of the State, in a measure consigning to misery and ruin many hundred families, who had trusted to its good faith, and calculated to bring severe and merited reproach on a former Assembly, a decent regard for the opinions of men should have induced the House to have heard the evidence which was called for, so as to give some semblance of justice to their proceedings. This was nevertheless refused, and an example set for preferring rumor to facts, assertions to proof, and conjecture to full and complete information. A solemn vote precluded probing inquiry, and then the House assuming facts, assigned them as grounds for repealing a law founded in wisdom, justice, and sound policy. If this proceeding is not a mockery of justice, and a satire on the House, it must be admitted to be of the most dangerous example.

3d. Because the confirming act was founded in *wisdom and sound policy*, and the allegations in the preamble to the bill repealing it, that "it was unconstitutional, and of the most dangerous consequences;" and that "the reasons set forth in the preamble of the said act, do not appear sufficient to warrant any legislative interference," are without foundation.

The *salus populi*, or safety of the people, is the supreme law of the land, to which all inferior rights and regulations must yield. They originate from and are auxiliary to society, and may, on reasonable compensation made, be lawfully resumed, whenever the great ends thereof require it, *for the accomplishment of some great good, or to avert an impending evil*. These important truths result from the very nature of society, and the first principles of government. They are sanctioned by the principles of individuals and the practice of nations. They are confirmed in abundant instances by our municipal laws, and recognized by our bill of rights. The Legislature who enacted that law were neither so weak nor so wicked as men less informed and not more virtuous, have supposed them to have been. The state of the Commonwealth called for the system which they adopted, and had a policy equally just and wise been since pursued, the faith of *Pennsylvanica* would not have been broken, or her honor tainted by her own sons.

If the House had designed to inquire for themselves of witnesses at the bar, or in committee of the whole, instead of trusting to others, the truth might have appeared on our journals, and a curious spectacle would have been exhibited by contrasting it with the preamble of the bill. But the hurry with which they charged a former House with proceeding "hastily and without due consideration had," not admitting of the necessary inquiries, has exposed them to that censure which has been wrongfully imputed to others. The conduct of the Legislature in November, 1787, when the same business came before them, was very different. Instead of listening to idle rumors, they called witnesses to their bar, and examined for themselves. They had written documents laid before them, and became well acquainted with all the facts which led to the quieting act, as well as with its effects. The charter boundaries of Pennsylvania and Connecticut were supposed to clash, and had long been contested before and since the Revolution. Each asserted her claim to the country at and about Wyoming, and manifested a resolution to maintain them at every hazard. The *Connecticut claimants* settled themselves on the lands, under grants from the *Susquehanna Company*, and the patronage of *Connecticut*. They maintained and cultivated their lands, until the decree of Trenton, in 1762. That decree settled the rights of soil and territory, as between the contending States, in favor of *Pennsylvanica*, but it neither did nor possibly could affect the private rights of individuals. The judges who pronounced that decree, nevertheless became well acquainted with the nature of the settlements, and the equity resulting from them. Under the impressions made thereby, they wrote a letter to the Executive authority of *Pennsylvanica*, which is perhaps lost, but the following account of it has been given by one of the same judges in a subsequent letter: "We had many strong reasons for writing the letter to the President of *Pennsylvanica*. We were fully acquainted with the circumstances of the New England settlers. We knew that many of them had honestly

for other purposes therein mentioned,' hath been found, in its principles and operations, to be unjust and oppressive, inasmuch as it divested many citizens of this State of their lands without their consent, and without making them any just compensation; *And whereas*, Depriving individuals of their property in such a summary way is unconstitutional, and of the most dangerous consequence; *And whereas*, Said act was enacted by

paid for their possessions; that they verily believed the title under which they claimed to be perfectly good; that they had cleared, built upon, and improved the land; that in doing this they had encountered many dangers, and suffered innumerable hardships; and beyond all these things, and what cannot be estimated, many of their nearest connexions had spilt their blood in defense of their possessions.

"Thus circumstanced, it was manifest that they had become enthusiastic for the land; that the reasoning of legislators and statesmen would have but little weight with them; that if the State should attempt to dispossess them, they would become desperate, and a civil war would be the consequence. On the contrary, if the State should quiet them in their possessions, they would become peaceable, good citizens, and that the State could compensate those who held the *Pennsylvania* title, by giving them an equivalent in lands or money, at a less expense than that of dispossessing the New England settlers. That therefore the interest, the humanity, and the policy of the State, would lead them to adopt the measures that we recommended. The letter bore no official authority. We subscribed it as private citizens. Nevertheless we did conceive that it would have some weight, as it must be apparent that our means of information have been better than those of any other persons, who were disinterested."

A different policy from that which had been so warmly recommended was adopted by *Pennsylvania*. She levied troops, and marched them into the hapless country, dispossessed the settlers without any trial of their rights. The horrors of war were renewed, and from the supposed inclemency of our measures, or some other cause, a dangerous confederacy was forming against us. The *Connecticut claimants* were a bold and hardy set of men, inured to toils and trained to arms. Their enrolled militia, between the ages of eighteen and fifty-eight, amounted to six hundred and eighty-five, exclusive of those of some townships, whose returns had not come to hand. Besides these, it appears that there were many able-bodied men among them, not between those ages, but who were capable of being brought into action to great advantage, as occasion might call for it. Many fruitless efforts had been made by *Pennsylvania*, at the expense of some blood and much treasure, to subdue the country, and establish her authority within it; but experience had evinced that the inhabitants, when assailed by a superior force, only retreated to the fastnesses of a rugged country, till that force was removed. Thus situated, they had for many years there kept *Pennsylvania* at bay, or made momentary retreats, as circumstances dictated. At the time of passing the act, the affairs of that country had assumed a very different and still more menacing aspect. The number of settlers was increasing. The *Susquehanna Company*, under whom they held, was composed of influential characters in the States of *Connecticut* and *New York*. The efforts of *Pennsylvania* after the decree of *Trenton*, to dispossess the settlers by an armed force, united that company in a resolution to support them. They offered a bounty of two hundred acres of land, to every able-bodied man who would settle among them. Many had already accepted of these terms of enlistment, and marched to the land of conflict. The settlers were emigrants from *Connecticut*, where their friends, connections, and adherents remained. The Legislature of *Connecticut*, their parent State, which had by her public acts countenanced the forming of that settlement, were, to use the words of some of their witnesses, in a flame the moment they heard of the conduct of *Pennsylvania*, which they branded with the epithets of "cruel and unjust," and with much difficulty the cooler members abated their resentment. But danger did not threaten these quarters only, and *Pennsylvania* had perhaps still more to apprehend from another. It was made at the bar of the House, and if inquiry had not been precluded, it might have appeared again, that shortly before the passing of the act, *Colonel Ethan Allen*, one of the principal founders of *Vermont*, had been at *Wyoming*, and joined in the plan of erecting a new State, and that he and his followers were to be rewarded by a share of the lands for their services; that he had returned home, as was probable from circumstances, with the view of collecting his strength to carry this plan into execution. It would not have become *Pennsylvania* a any time, much less in her then feeble and distracted state, to behold such a dangerous combination with indifference, or to be inattentive to the breaking of it. Nor was this all; for it appeared from very respectable evidence given at the bar, that a gentleman of high rank in the late army, had at the same time resolved on marching with a large train of his followers to *Wyoming*, and after settling there, to share one common fate with those who had alone baffled *Pennsylvania* in all her attempts to expel them. And it is equally certain, that as the insurrection in *Massachusetts* had just been quelled, there was too much reason to fear that the ringleaders and their followers might take the same course. What was it but this that induced *Pennsylvania* to offer additional rewards for apprehending them? Whether a mistaken policy on the part of *Pennsylvania*, prejudice against her, or the feelings of humanity in favor of devoted victims, led to these confederacies, is not now material, since they did exist, and her faith was pledged by solemn contract in order to break them. Thus situated, did sound policy call for girding on the sword against numerous bands of gathering foes, or for the adoption of those lenient but honorable measures, which had been so warmly recommended by disinterested and well-informed judges? *Pennsylvania* remembered that

the Legislature hastily, without due consideration had, and proper information of the magnitude of the grant; *And whereas*, Carrying said act into effect would impose a grievous burden on the good citizens of this State, to make compensation to those who would thereby be divested of their property; *And whereas*, The reasons set forth in the preamble of said act do not appear sufficient to warrant any legislative interference or

the *Connecticut claimants* had, alone and unsupported, for many years baffled all her exertions to establish her authority among them. She had seen them increasing in numbers and prowess amid all their difficulties. She saw dangerous combinations formed and forming against her. She saw herself but just emerged from a long, a burthensome and bloody war. She saw her treasures exhausted, and her people overburthened with taxes. She saw general reluctance, and sometimes a refusal in her militia, to risk their lives in what was considered by some as the quarrel of individuals about their speculations in lands. By party broils she was enervated at home, and from the prejudice which had been excited by her preferring arms to the lenient but dignified measures which had been recommended after the decree at Trenton, she had little to hope, and much to fear from abroad. Political exigencies determined her choice, and called for immediate action. A small delay might have plunged her into a long and expensive war, or obliged her to retreat with the loss of reputation. For these reasons, the act appears to have been founded on wisdom, justice, and sound policy, and if the epithets now bestowed upon it apply at all, it must be to the bill for its repeal.

4th. Because the act hath, so far as depended on the *Connecticut claimants*, had the effects proposed, and the allegations to the contrary, in the preamble to the bill for its repeal, are unfounded. *It was incontestibly proved on a former occasion at the bar of the House, that the Connecticut claimants, whose rights had been acquired previous to the decree at Trenton, and who were the only persons included in the act, were perfectly satisfied therewith, and that all of them, except six or eight, had submitted to the government and laws of Pennsylvania; that all those who had been disposed to join them, had abandoned their design, except the half-share men, who had come among them since the decree at Trenton, and who were not included in the act. These being too insignificant to make any formidable opposition, have either abandoned the settlement, or encouraged by the wavering conduct of Pennsylvania, remain ready to renew their mischiefs, if by her breach of faith, others should be induced to join them. Hence the most salutary effects have been derived from the law; and war, perhaps more expensive than the compensation to have been made, was avoided; peace and tranquillity were restored, or rather took place for the first time. The government and laws of Pennsylvania have been established, and had their free operation, and allies, formidable from their numbers and situation, abandoned their hostile views. Thus the great objects which the Legislature had in view in passing the Confirming Law, have really been accomplished. They were principally these: 1st. To conciliate the mind of those *Claimants*; to induce them to relinquish their designs of absolutely rejecting the jurisdiction of this State, and in conjunction with others who had associated, and were preparing to associate with them, of erecting a new and independent State in that and the adjacent country. 2d. To put an end to the distresses, expense, and bloodshed, which during a series of years had attended this dispute; and to prevent the still more serious evils of a civil war, which not only a contrary policy, but a delay of that salutary confirmation were likely to produce; the measures which those people were then pursuing having a direct tendency to that fatal issue. 3d. A further object of that law was, that by having their lands confirmed to them, those people might be induced, not only to relinquish the designs already mentioned, but to submit to the government, and become useful as well as peaceful citizens of this State. 4th. Another object, and it was an object of high importance, was to render practicable the settlement of an extensive adjacent country, to which the contention about the Wyoming lands had for many years proved a fatal bar. These were the great objects of the Confirming Law; these were the effects proposed and expected to result from it; and the event has justified the expectation. The adjacent country is in a train of settlement, and if the county of *Luzerne* itself has not greatly increased in population and improvement, it is to be attributed to the long suspension of the Confirming Law.*

5th. Because the preamble contains most indecent and unwarrantable reflections on the Assembly by which the Confirming Law was enacted. That Assembly was impressed with the weighty considerations above stated; considerations which received additional force from many collateral circumstances, which a retrospect to the numerous mischiefs which had flowed from the dispute about the Wyoming lands could not fail to bring to remembrance. That Assembly must have recollected the many fruitless attempts of government to extend its jurisdiction over that country, and have seen that the obstacles to it were daily increasing. They saw that there was but this alternative, either to confirm the lands to the old *Connecticut settlers*, or immediately to raise a military force, with the hope of subduing them. They chose the former, and disinterested men of sound judgment approved the choice. It is well known that at the time when that law passed, the Union of these States was but a rope of sand; that the people of Wyoming, amidst many sufferings and oppressions, received countenance from their parent State, Connecticut; that they had numerous and interested connexions in that State; and that under such circumstances, a war commenced against the Wyoming settlers, might have drawn after it very serious consequences. A Legislature passing the Confirming Law, for such reasons and under such impressions, ought not to be charged with doing it hastily and without due consideration. It was a measure which we have

departure from the established rules of justice, in respect to private property, nor hath had the effect proposed :

"SECT. II. *Be it enacted, &c.,* That the act, entitled 'An act for ascertaining and confirming to certain persons called Connecticut claimants, &c.,' * * * be and the same is hereby repealed, and all proceedings had under said act are hereby rendered void, and declared to

seen had been recommended to the State by men to whose judgment in this case, the highest deference was due, and whose discernment and impartiality ought not to be impeached by this House. And various transactions of the Legislature, at different periods, before the Confirming Law was made, clearly manifest their opinion that some equitable provision ought to be made for the *Connecticut claimants*, who had settled in that country before the decree at Trenton, and for the widows and children of such as had fallen, (and a multitude of them *had fallen*,) fighting against the savages. A law passed under such circumstances cannot justly be called unconstitutional. At the time when the Confirming Law was passed, the General Assembly had the exclusive right to judge of its expediency, propriety, and necessity; and even admitting (which we do not admit) that the Assembly had on those points formed an erroneous judgment, yet so far as its grants or engagements extended, they are irrevocably binding on the State, and cannot be canceled without the consent of those to or with whom they were made.

6th. Because all the acts of the Legislature which appear on their journals since the Confirming Law was passed, manifest an intention, ultimately, to establish the claim of the *Connecticut claimants*. When accidental causes had rendered it impossible for all of them to exhibit their claims within the time prescribed by the Confirming Law, the power of the Commissioners was suspended by a law made for that purpose; lest by a partial establishment of claims, (which could apply only to such as they had an opportunity to receive and examine,) much mischief and confusion should arise. But the suspension of a law is in its nature only a temporary measure; and in this case it was expressly declared to be only until the Legislature should make further provisions and regulations in the premises. At the same time a bill was introduced, adopted, and published for consideration, for the purpose of granting the seventeen townships entire to the *Connecticut claimants*; a grant that there is sufficient evidence to show would greatly have exceeded the claims which could have been admitted under the Confirming Law. The next day a resolve was passed, to authorize the Supreme Executive Council to take proper measures for ascertaining the quantity and value of the land claimed by *Pennsylvania* owners, to be reported at the next session, "that the House might the better be enabled to decide on the compensation to be made them." All these transactions took place long after the Confirming Law had been enacted, and they will admit of but one or two meanings: Either that the Legislature still judged it proper and necessary substantially to carry the Confirming Law into execution, and meant eventually to do it; or that the cogent reasons which induced the passing of it, still continued in such force, that a repeal of it would have been dangerous, and, therefore, that the Suspending Law, the bill for granting the seventeen townships entire, and the resolution preparatory to the making compensation to the *Pennsylvania claimants* were necessary to excite in the *Connecticut settlers* an expectation of a final establishment of their claims, to soothe and keep them quiet, to prevent any accession of force, and to detach from them their new associates; but that when these views should be accomplished, and when it should be found that the jurisdiction of the Commonwealth was completely established in *Luzerne County*, the Confirming Law should be repealed. But if some, by their conduct in this business, are disposed to impute such base and dishonorable motives to a former Legislature, we are not. The obvious construction of those public acts forbids the suspicion.

7th. Because the grants of land solemnly made by the Confirming Law to the *Connecticut claimants*, assure to them effective titles, and the property thereby vested in them cannot be taken from them, without providing for them a complete compensation. But such compensation would far exceed that which has been engaged to the *Pennsylvania claimants*. Therefore, if the mere *interest* of the State be regarded, the Confirming Law ought not be repealed. The journals and files of the Legislature clearly show that the Assembly which enacted the law for confirming to the *Connecticut claimants* the lands by them claimed in the county of *Luzerne*, were not ignorant of the magnitude of her grant. The petition of those claimants explicitly states, that their claims extended through seventeen towns, generally of five miles square, and to some detached lots, and the committee on that petition reported to the Assembly that the petition was for entire and extensive tracts. In addition to it, the law by relative terms refers to the petition; is founded upon and confined to it; and as the claims are then stated, it is but a trifling with words to say, that "the Legislature had not proper information of the magnitude of the grant."

8th. Because, if we should say that at the time the Confirming Law was enacted, there did not exist sufficient reasons for passing it, if we should declare in the words of the preamble of the repealing law, "that it was hastily passed without due consideration," it would be to accuse that Legislature of criminal improvidence and inattention to their duty. But no subsequent Legislature can be justified in doing this, unless (which is impossible) they can see and feel all those reasons and impressions under which the law originated.

9th. Because, if the repealing law could possibly produce the effect intended by its supporters, it will nevertheless bring an indelible disgrace on the State. It will show

be null and of no effect; and all titles and claims which might be supposed to be affected by said act are hereby re-vested in the former owners, in as full and ample a manner as if the said act had never been enacted, anything in the same to the contrary notwithstanding.

"SEC. III. AND WHEREAS, It hath been represented to this house, that judgment has been obtained in sundry actions of ejectment brought in the court of Common Pleas for the county of Northumberland, for sundry tracts of land now lying within the county of Luzerne, at the suit of persons claiming under titles derived from the late Proprietaries of Pennsylvania, in which judgment by default has been recovered against persons holding such lands by virtue of rights or titles derived from or under the State of Connecticut, and it is right and just that the defendants in such actions should not be dispossessed without a trial by jury: Be it therefore enacted by the authority aforesaid, That no writ or writs of *Scire Facias*, or *Habere Facias Possessionem*, shall issue from the said court to revive such judgments, or to carry them into effect; but original suits in ejectment, for recovery of any such tracts of land within the said county, may be brought at the suit of such Pennsylvania claimants or any of them."

The third section seems to recognize a right in the Connecticut settlers to their possessions. The extraordinary power is therein assumed of *reversing judgments in ejectment obtained against them by Pennsylvania claimants*, and of compelling the plaintiffs to institute new suits to try their rights.

Colonel Jenkins's anxious question had, indeed, and at last, received its answer.

Still the people went on quietly, and hopefully. Although this law was repealed,* it recognized their case. They settled

that not honor and justice, but mere mercenary views governed its conduct; that it held itself bound by its contracts, only when a fulfilment of them coincided with its interests; and that though by its laws, it will compel the honest performance of disadvantageous contracts, entered into by individual citizens, yet in its own case, settling itself above the law, it will pay no regard to them.

10th. Because the formal repeal of the Confirming Law, while it prostrates the faith, and honor, and dignity of the State, will not procure any equivalent, if, in the nature of things, there can be any possible equivalent for the sacrifice of those great principles of society and government; because the repeal itself will be nugatory, for it is an infraction of the laws of nations, a violation of the Constitution of the United States, an *ex post facto* law, a law violating the obligation of a solemn public contract, and the courts of the United States must pronounce it to be of no effect. Hence the folly of the repeal will equal its injustice; for there will not remain even the paltry consideration of *interest* to console the State for the loss of its honor, dignity, and faith. It is too probable that the mischiefs resulting from the measure may be serious in their nature and of long continuance. Those who were appeased by a good policy, will not be appeased by a faithless one; and those who formerly joined them from motives of humanity, may do it again, from the additional one of our having added treachery to violence. Whatever may be the event, we dissent from the vote passing the bill into a law, and desire that our reasons may be recorded in justification of our conduct, and for the information of our constituents.

WILLIAM LEWIS,
JOHN NEVIL,
OBADIAH GORE,
SAMUEL ASHMEAD,
HENRY DENNY.

* Vote on repeal of "Confirming Law," April 1, 1790.

Yeas.

County.

Francis Gurney,	City of Philadelphia.
Thomas Paul,	County of Philadelphia.
Thomas Britton,	County of Philadelphia.
Elias Boys,	County of Philadelphia.
Gerardus Wynkoop,	Bucks county.
Valentine Upp,	Bucks county.

into a conviction that somehow, at some time, their titles would be secured, and receive just and legal sanction.

The "reflections" that occur to me on the events since the Decree of Trenton would be something like these:

1. The decision was most unexpected, and came upon the settlers without any organized sentiment among them. They, plain men, looked forward to, and had reason to expect, a rehearing, or the formation of a new tribunal.

2. Pennsylvania authorities meant to deal equitably with those "who actually resided on the lands at Wyoming before the decree," and the "families of those who fell fighting the savages," but was perplexed how it could be done "without a violation of the rights of property in a multitude of instances, those lands having been granted by Pennsylvania to many individuals who insisted on their titles, and pleaded the sanc-

John Chapman,	Bucks county.
James Bryan,	Bucks county.
John McDowell,	Chester county.
James Clemson,	Lancaster county.
Jacob Erb,	Lancaster county.
John Miller,	Lancaster county.
Jacob Schmyser,	York county.
William Godfrey,	York county.
Thomas Kennedy,	Cumberland county.
David Mitchell,	Cumberland county.
Jonathan Hoge,	Cumberland county.
John Ludwig,	Berks county.
Nicholas Lutz,	Berks county.
Daniel Lienbach,	Berks county.
John Moore,	Bedford county.
Samuel MacLay,	Northumberland county.
John White,	Northumberland county.
John Baird,	Westmoreland county.
James Barr,	Westmoreland county.
James Allison,	Washington county.
Alexander Wright,	Washington county.
James Marshall,	Washington county.
Thomas Ryerson,	Washington county.
John Gilchrist,	Fayette county.
James Finley,	Fayette county.
James Johnson,	Franklin county.
John Rhea,	Franklin county.
Jacob Reiff,	Montgomery county.
Benjamin Markley,	Montgomery county.
James Vaux,	Montgomery county.
Jacob Milley,	Dauphin county.
John Carson,	Dauphin county.
James McCreight,	Dauphin county.
David Stewart,	Huntingdon county.
Hugh Lloyd,	Delaware county.
Richard Riley,	Delaware county.

<i>Nays.</i>	<i>County.</i>
Lawrence Sickel,	City of Philadelphia.
Jacob Hiltzheimer,	City of Philadelphia.
William Lewis,	City of Philadelphia.
William Rawle,	City of Philadelphia.
Samuel Ashmead,	County of Philadelphia.
Richard Thomas,	Chester county.
Richard Downing, Junior,	Chester county.
Henry Dering,	Lancaster county.
Thomas Lilley,	York county.
Herman Hershbar,	Bedford county.
Jonathan Roberts,	Montgomery county.
Obediah Gore,	Luzerne county.
John Nevil,	Allegheny county.
John Harris,	Mifflin county.

tion of laws." (President Dickinson to Governor of Connecticut, March 1784.) She had not yet reached the manifest equity, and plain duty, of giving the "Yankees" the very lands they had improved and defended. She ought instantly to have quieted them in their farms and improvements.

3. The Commissioners in their first act in 1783, against the spirit of their instructions, alarmed the settlers and closed the door to "conciliation" by the declaration "that Pennsylvania would not and could not deprive *her citizens* of their property."*

4. The Landholders reached the climax when they put forward their unfeeling "compromise" that "*the settlers might remain one year, the widows of those who had fallen by the hands of the savages, a year longer.*"

5. The Connecticut settlers placed themselves in a position of contending for *other claims* than *their own* when they refused the offer (ungenerous as it was) *on the ground* that "we cannot, as we are *joint tenants*, with a much greater body of joint proprietors *than are here*, without their consent, give up our claims to those lands in dispute." The impediments, all the way through, arose from blending the case of those who settled *before* the Decree with *non-residents*, and others who came *afterwards*, under the Susquehanna Company. In point of *justice*, the cases were absolutely different.

6. Connecticut officials and laws no longer ruled the settlers. They waited, sullenly, for Pennsylvania to act. *They justly considered themselves in possession, as they were, and had been since the year 1770.*

7. When Pennsylvania did act, she sent two companies of soldiers to uphold her flag, and Alexander Patterson as her civil magistrate. He was, in fact and in truth, the agent of the Landholders, and his zeal for his "constituents" absorbed his functions as an officer of the State. He was insolent, unreasoning, and cruel. This line of action necessarily inspired first alarm, then contempt, and finally retaliation.

8. The proceedings of the Assembly were so indecisive "as to inspire neither confidence nor terror." They adopted a variety of measures, some pacific to conciliate and some hostile to reduce the settlers. With all schemes of adjustment thus "in the air," it was inevitable that the two classes of claimants must come into collision.†

9. The action of the Susquehanna Company after 1782 was inexcusably mischievous and wholly unjustifiable. The power and pride of Pennsylvania were sure to be successfully

* In the course of the proceedings of the House of Assembly of New York (1790) upon the subject of yielding up her claim of jurisdiction over the district called Vermont, and admitting it to be an independent State, the following motion was made and carried, without debate: "That nothing in this act contained is intended, or shall be construed, to give any person claiming lands in such district so to be erected into an independent State any right to compensation whatsoever from this State." New York thus abandoned her claimants, but no person ever proposed Pennsylvania should abandon hers.

† For details of these events, see *Col. Records*, Vol. XIV; *Penn. Arch.*, Vol. X.

arrayed against them, and it was certain that its authority must finally prevail. At this late day, it will be unprofitable to attempt critical estimates of conduct, and to measure out to the parties severe judgment.*

10. During the years 1785-6, the conduct of *some* of the *leaders* of the Connecticut people, under the reckless proceedings of the Susquehanna Company, was simply insurrectionary. Pennsylvania was then pursuing no hostile measures towards them, but, on the contrary, able advocates were springing up in Pennsylvania in their behalf and had already made a deep impression in the councils of the State.

11. The repeal of "the Confirming Act," in 1790, was a bad breach of the public faith: the conduct of the settlers thereafter, and under this provocation, is worthy of all praise.

* Upham—"Life of Timothy Pickering"—delivers the following catholic judgment on Pennsylvania. He says: "The lenient course of Pennsylvania during the several stages of the controversy with Connecticut reflects honor upon her wisdom, as well as humanity. At different times she took many of the settlers in battle or skirmish, and held them as prisoners in her jails at Easton, or elsewhere, among them several of their leaders. She did not execute upon them any military or judicial penalties. She treated them not as wicked, but as misguided, men, allowing them to be discharged. Such a course may have been called 'imbecility' by some, but is entitled, in the judgment of enlightened statesmen and philanthropists, and will be more and more so as the world advances, to commendation and honor, reflecting the truest glory on the character of Pennsylvania. Upon the whole, no conflict in arms, protracted through such a period of years, and accompanied by so much provocation, is so little stained by cruelty and vindictiveness, or has a better record for bravery, resolution, or endurance, than the very fight for jurisdiction over the Wyoming lands."

Of the Connecticut settlers, he reasonably and naturally judges thus: * * * *
 "Persons living in a wilderness, far more remote from organized communities, without means of communication with the rest of the world, are apt to acquire a spirit of independence making them disregardful of the artificial restraints that have to be recognized in more crowded states of society. They know nothing of the tribunals, and care nothing for the technicalities of law. He who, by his own axe and plough, has transformed the acres, within which his daily and yearly life is bounded, from a pathless, worthless forest, into a cultivated and productive inclosure, feels that he owns it by a title better than all written documents or recorded deeds. His farm, his house, his barns, all that he has, thinks of, or cares about, is literally the work of his own hands, his sole creation. No other man has contributed to it; and it is hard to make him understand that any other man, be he called what he may—Governor, proprietor, legislator, judge, or sheriff—has a right to take his land from under his feet. He will hold to it as his life, and fight for it against the world. * * * * In the mean time, those lands had become more and more endeared to them by every principle of association, every habit of homely life, every trial, and every peril. By their toil and energy they had been reclaimed from the rugged wilderness of nature, and converted into smooth lawns and verdant meadows of marvelous beauty and loveliness. Adventurers from other colonies and other lands had, one by one, been drawn into their company, attracted by tales of world wide currency, portraying the charming aspect of the country, the excellence of its soil for the culture of grains and fruits, and every attribute that can adorn a landscape, and give reward to industry. It was not only endeared to its occupants by the attachments now mentioned, but consecrated by special experiences of blood and woe, that have riveted on them the sympathies of mankind, perpetuated in the hearts of all coming generations by verses of foreign and native bards that will never die. The devastations of their fields, the conflagrations of their dwellings and barns, and the repeated massacre of their people—men, women, and children—by savage hordes, all these combined could not destroy or weaken the tenacity with which they clung to their lands. Those who escaped the tomahawk and scalping-knife had come back over and over again from their places of refuge. The invincible, indestructible community persevered in its contest against all odds, and no power, civilized or barbarian, could root it out."

With judicial impartiality, he concludes thus: "Upon balancing the facts and evidence, we are brought, not to the conclusion usually the result of a fair consideration of the whole subject in like cases, that both parties were in the wrong, but that both were substantially in the right."—*Volume II, page 238.*

VII.

SOME OPINIONS OF THE COURTS.

In the regions of their grant above Wyoming, the Susquehanna Company went on with their operations. They laid the territory of the present county of Bradford out in townships, not co-terminous with any municipal sub-divisions of this State. By the year 1795, it is believed, the county of Bradford was covered by the "claims" of these grantees, and by "warrants" from Pennsylvania, on top of them. Whereupon, on the *11th April, 1795*, a statute was passed, the material sections of which were as follows :

"That if any person shall, after the passing of this act, take possession of, enter, intrude, or settle on any lands, within the limits of the counties of Northampton, Northumberland, or Luzerne, by virtue or under color of any conveyance of half share, right, or any other pretended title, not derived from the authority of this Commonwealth, or of the late proprietaries of Pennsylvania before the revolution, such person, upon being duly convicted thereof, upon indictment in any court of oyer and terminer, or court of general quarter sessions, to be held in the proper county, shall forfeit and pay the sum of two hundred dollars, one half to the use of the county, and the other half to the use of the informer; and shall, also, be subject to such imprisonment, not exceeding twelve months, as the court, before whom such conviction is had, may, in their discretion, direct.

"*And be it further enacted by the authority aforesaid*, That every person who shall combine or conspire for the purpose of conveying, possessing, or settling on any lands within the limits aforesaid, under any half share right, or pretended title, as aforesaid, or for the purpose of laying out townships, by persons not appointed or acknowledged by the laws of this Commonwealth, and every person that shall be accessory thereto, before or after the fact, shall, for every such offense, forfeit and pay a sum not less than five hundred nor more than one thousand dollars, one half to the use the county, and the other half to the use of the informer, and shall, also, be subject to such imprisonment, at hard labor, not exceeding eighteen months, as the court, in their discretion, may direct."*

* *Vote on the Intrusion Law, April 11, 1795.*

<i>Yeas.</i>	<i>County.</i>
Benjamin R. Morgan,	City of Philadelphia.
Jacob Hiltzheimer,	City of Philadelphia.
Francis Gurney,	City of Philadelphia.
Lawrence Seckel,	City of Philadelphia.
Robert Waln,	City of Philadelphia.
Thomas Forrest,	County of Philadelphia.
Joseph Magoffin,	County of Philadelphia.
Thomas Paul,	County of Philadelphia.
Thomas Britton,	County of Philadelphia.
Thomas Bull,	County of Chester.
Roger Kirk,	County of Chester.
Joseph Pierce,	County of Chester.
Robert Frazer,	County of Chester.
Thomas Boude,	County of Lancaster.
Matthias Barton,	County of Lancaster.
Daniel Buckley,	County of Lancaster.
John Eckman,	County of Lancaster.
Boice Clark,	County of Lancaster.
Philip Gartner,	County of York.

Section 6 excepts any claims of persons claiming under "the confirming act" of 28 March 1787, &c.

The exception took "the seventeen townships" out of the effect of the Act.

Under this Act John Franklin and John Jenkins *et al.* were indicted at August sessions, 1801, in Luzerne county, and a special verdict found against them. It was removed by *certiorari* into the Supreme Court. There the Act was held constitutional, but the defendants were discharged on other grounds. *Commonwealth vs. Franklin et al., 4 Dallas, 255, 316.* (The arguments of counsel as reported here are worthy of attention.)

It was held under this act "that the contract in this case, (for the sale of lands,) is illegal, being founded on a breach of the law, and, of consequence, a void contract." *Mitchell vs. Smith, 1 Binney, 110.*

This act is known as the "Intrusion Law," and has been subjected to much harsh criticism.

Alexander Turner,	County of York.
Thomas Campbell,	County of York.
John Stewart,	County of York.
William McPherson,	County of York.
John Spayd,	County of Berks.
Stephen Balliott,	
George Hughes,	County of Northumberland.
Benjamin Lodge,	County of Westmoreland.
Michael Pugh,	County of Westmoreland.
William Henderson,	County of Franklin.
Isalah Davis,	County of Montgomery.
Jacob Weirick,	County of Dauphin.
David McMurtie,	County of Huntingdon.
Presley Nevill,	County of Allegheny.
Dunning McNair,	County of Allegheny.

<i>Nays.</i>	<i>County.</i>
Richard Tittermary,	County of Philadelphia.
John Ross,	County of Chester.
James Ke'ley,	County of York.
Jacob Crever,	County of Cumberland.
John Montgomery,	County of Cumberland.
Charles Shoemaker,	County of Berks.
John Christ,	County of Berks.
Baltzer Gehr,	County of Berks.
George Graff,	County of Northampton.
Abraham Bachman,	County of Northampton.
John Moore,	County of Bedford.
Jacob Nagle,	County of Bedford.
William Patterson,	County of Bedford.
Flavel Roan,	County of Northumberland.
Jacob Fullmer,	County of Northumberland.
George Smith,	County of Westmoreland.
William Wallace,	County of Washington.
Craig Ritchie,	County of Washington.
James Brice,	County of Washington.
Benjamin White,	County of Washington.
John Cunningham,	County of Fayette.
Daniel Royer,	County of Franklin.
Cadwalader Evans,	County of Montgomery.
Christian King,	County of Dauphin.
Benjamin Carpenter,	County of Luzerne.
William Sterrett,	County of Mifflin.
James McFarlane,	County of Mifflin.

At length on the 21 April, 1795, the case of *Vanhorne's lessee vs. Dorrance, 2 Dallas, 304*, came on to be tried in the Circuit Court of Pennsylvania District. It was ejectment for a little tract of about twelve acres. Selected as a test, the plaintiff naturally brought it on the best title which could be produced. Jared Ingersoll, Jona. D. Sergeant, and William Tilghman appeared for the plaintiffs. William Rawle, William Lewis, and Joseph Thomas appeared for the defendants.

There was the fullest latitude in the testimony.* All the charters and deeds, hereinbefore referred to, were put in evidence. The surveys and possession of the tract in controversy were given. Colonel Denison, for the defendant, detailed his entry upon the lot in 1770, and the incidents of the first Pennamite war. William Gallop gave in evidence an account of "the massacre." Colonel Pickering narrated the events of the second Pennamite war, and of the reception of the Confirming Act. Robert Morris stated how, while a member of the Assembly in 1786-7, he, at first, was in favor of calling out the militia to expel the Yankees, but became an advocate for the Act. The resolves of Connecticut—the records of the Susquehanna Company—Smollett's History—acts of Congress—the conduct of Patterson and Armstrong's troops—Colonel John Henry Lydius' deposition as to the execution of the famous Indian deed of 11th July, 1754 (Mr. Tilghman hands this deed to court and jury, to show its suspicious face), were all put in evidence.†

It was such a case as had never been tried in Europe or America.

It sufficiently appeared that the defendant had the earliest and a continued possession. The plaintiff claimed under a "warrant of survey" executed 15th March, 1771.

Judge Patterson gave the jury binding instructions, and made short work of the Connecticut title.

I. "The title under Connecticut is of no avail, because the land in controversy is ex-territorial; it does not lie within the charter bounds of Connecticut, but within the charter bounds of Pennsylvania. The charter of Connecticut does not cover or spread over the lands in question. Of course, no title can be derived from Connecticut."

* The "notes of testimony" and "briefs" of some of the attorneys are in the hands of Mr. Jenkins, of Wyoming. They constitute a part of the mass of valuable material in his possession. See Appendix IV.

† The original deed of 11 July, 1754, is now in the files of the case in the office of the Clerk of the U. S. Court. To it is attached the *ex parte* deposition of Lydius, made in 1790, and some other depositions.

The declaration that the land, "does not lie within the charter bounds of Connecticut" is here, for the first time in the history of the controversy, judicially made. This was not decided by the court at Trenton—their decree was only that, *at the date of it*, the "jurisdiction" and "preemption" was in Pennsylvania as against Connecticut. This conclusion may have grown out of acts of "dereliction" or "estoppel," since the *date of charter*, as well as out of a question of original "charter bounds."

Nor did it follow that "*of course*, no title could be derived from Connecticut." The judge does not advert to the facts from which the court at Trenton made the distinction between "jurisdiction" and "private right of soil"—that the defendant's title had been created under *another sovereign* actually *exercising jurisdiction*—that that jurisdiction had been recognized by the United States in various ways, notably by accepting the troops from Wyoming, the Twenty-fourth Connecticut regiment, as part of the Continental line—by accepting, absolutely, the cession of western territory from Connecticut under the same title the defendant held—that (by sufferance or otherwise) Pennsylvania had permitted the *de facto* government of Connecticut to be maintained at the *situs* of the land in dispute—and that in the origin and progress of the whole business there were such circumstances as *might give* the defendant title, independent of the will of Pennsylvania, previous to the 30th December, 1782.

2. The "Indian deed" was summarily dismissed as one "under which the Connecticut settlers derive no title."

3. As to the title under the Confirming Act of 1787:

An act calling upon an individual to surrender or sacrifice his whole property for the good of community, without receiving a recompense in value, would be "a monster in legislation, and shock all mankind. The Legislature, therefore, had no authority to make an act divesting one citizen of his freehold, and vesting it in another, *without a just compensation.*" * * *

"The next step in the line of progression is whether the Legislature had authority to make an act divesting one citizen of his freehold and vesting it in another, even *with compensation.*"

"The existence of such power is necessary. * * * and if this be the case, it cannot be lodged anywhere with so much safety as with the Legislature."

Such a case of necessity, and judging too of the compensation, can never occur in any nation. * * * even upon full indemnification, unless that *indemnification be ascertained in the manner* which I shall mention. * * * Here the legislation must stop, * * * they cannot constitutionally determine upon the amount of compensation, or the value of the land."

That can only be done—"by the parties"—"by commissioners mutually chosen by the parties"—or, "by the intervention of a jury."

By the act, the Pennsylvania claimants are to present their claims to the "Board of Property," who are—

"1. To judge of the validity of their claims.

"2. To ascertain, by the aid of commissioners, *appointed by the Legislature*, the quality and value of the land.

"3. To judge of the *quantity of vacant land* to be granted as an equivalent."

"This is not the constitutional line of procedure." * * * *
By the act, the equivalent is to be land. No just compensation can be made, except *in money*."

"It is contended that the Legislature must judge of the necessity of interposing their despotic authority. Be it so. Did there exist also a State necessity that the Legislature, or persons solely appointed by them, must admeasure the compensation, or value of the lands seized and taken, and the validity of the title thereto? Did a third State necessity exist, that the proprietor must take land by way of equivalent for his land? And did a fourth State necessity exist that the value of this land-equivalent must be adjusted by the Board of Property, without the consent of the party, or the interference of a jury? Alas! how necessity begets necessity. * * * * 'Omnipotence in legislation is despotism.'" In short, gentlemen, the Confirming Act is void; it never had constitutional existence; it is a dead letter, and of no more virtue or avail, than if it had never been made."

In its application to the exact facts of the case of *Vanhorne vs. Dorrance*, this exposition is undoubtedly correct. The act applied to this state of facts was unconstitutional for the reason stated. But at the time the confirming law was passed, *the State was proprietor* of a large portion of the lands which the settlers held. The State had the power and right to give away her vacant lands, (vacant as to her titles,) and it is the better opinion that this law was binding on the Legislature in favor of an "actual settler, before the decree of Trenton," for whose land, at the date of the act, there had been issued no Pennsylvania title. In that respect, the confirming law was *not* "of no more avail than if it had never been made." Mr. Rawle, in his dissentient, goes further, and says: "But in no instance can the power of repealing laws affect their obligations while in force, and, consequently, if *the effect of the law while in force is permanent and perpetual upon the subjects to which it relates*, a repeal, although it may *destroy the law*, cannot *diminish the effect* it has already produced."

Judge Patterson proceeds to the mode of executing the law: "The estate of the Pennsylvania claimants was not divested on the passing of the act; it was not divested on presenting the claim on the part of the Connecticut settlers."

"*The intention* of the Legislature was to vest in Connecticut claimants, of a particular description, *a perfect estate* to certain lands in the county of Luzerne; but then it was *upon condition*," which, of course, must be complied with.

"If the Legislature had authority to make the confirming act, they had also the authority to suspend it. * * *

* * * Of course, there is an end of the business. The parties are placed on their original ground—they are restored to their pristine situation."

This would not be accurate as to the class of Connecticut settlers just referred to. As to them, the grant by the act was a good one—for a sufficient consideration recited in the act—they had a right of title, which a subsequent Legislature could not defeat. "*The intention*" the judge refers to had been executed, irrevocably, as to them.

Judge Patterson did not regard the repealing act of 1 April, 1790, bad, either as "an *ex post facto* law," or as "a law impairing the obligation of a contract." Yet he says himself: "If the property to the lands in question had been vested in the State of Pennsylvania, then the Legislature would have had the liberty and right of disposing or granting them to whom they pleased, at any time, and in any manner.*"

There were large quantities of such lands held by Connecticut settlers. Surely, as to such, the repealing law was "*ex post facto*," and "impaired the obligation of a contract," and as such, was contrary to the Constitution of the United States.

Judge Patterson closes pungently:

"1. The confirming act is unconstitutional and void. It was invalid from the beginning, had no life or operation, and is in precisely the same state as if it had not been made. If so, the plaintiff's title remains in full force.

"2. If the confirming act is constitutional, the conditions of it have not been performed, and, therefore, the estate continues in the plaintiff.

"3. The confirming act has been suspended, and

"4. Repealed."

All of which was perfectly true in its application to the facts of the case, and the verdict was properly for the plaintiffs.

The case was appealed to the Supreme Court of the United States. The docket entries there are as follows:

August Term, 1796.

John Dorrance vs. Cornelius Vanhorne's lessees, error from the Circuit Court of Pennsylvania.

1796, August, continued.

1797, February, continued.

1797, August 15, continued.

1798, February 14, continued.

1798, August 7.

1799, February 14. Rule to assign errors within two days, or that the writ of error be *non pros*.

1799, February 18. Ordered that the aforesaid rule be made absolute.

It was said Vanhorne fled the country so that service could never be made upon him, and that Thomas, the attorney for Dorrance, soon after trial, disappeared mysteriously, with all the papers of his clients.

* Pennsylvania herself, by the act of 3d December, 1782, entitled "An act to prevent the erecting any new and independent State within the limits of this Commonwealth," specially provided "that nothing in this act shall extend to the dispute now subsisting between the State of Pennsylvania and the State of Connecticut, respecting their *limits, boundaries, or jurisdiction*."

At all events, no results grew out of the case, and at its discontinuance public opinion had about ripened for the "Compromise Act" of 1799.

Colonel Pickering, 1798, dismisses the case thus :

"By this repeal (the confirming act) the courts of law were opened to the Pennsylvania claimants, who were *soon to get possession* of the disputed lands, and 'rid the State' of the *burden of compensation*! They brought many actions, and in *eight years* have *partly* tried *one cause*."

Our courts have frequently passed upon the nature of the Connecticut title in the "seventeen townships" as it was before the act of 1799.

Brackenridge, J., says in *Carkuff vs. Anderson*, 3 Binney 12 :

"Though repealed by a subsequent act, and recited in the preamble to this act as unconstitutional, my ideas of it still remain the same, on grounds of policy and natural justice, which I entertained of it when I gave my vote in the Legislature for the passing of it into a law; and though in the case of *Vanhorne's lessee vs. Dorrance* this idea of the unconstitutionality is sustained, yet it is in what appears to me a narrow view of the subject.

* * * I should, therefore, incline to think that the *possession, under claim of title*, which the Connecticut settler had prior to the decree of Trenton, might have been *bound by a judgment*, so that the after acquired title would inure to the advantage of the judgment creditor."

In *Enslin vs. Bowman*, 6 Binn., 467, (1814,) it was said by Tilghman, "that from the time of the decree of Trenton by which the right of the State of Pennsylvania was established to the tract of country within her boundaries, which was claimed by Connecticut, the courts of Pennsylvania must consider the title of Connecticut as of no validity either in law or equity, except as it may have been confirmed by our acts of Assembly."

Yeates, J., said :

"The object of the lawgivers (in Confirming Act) was not to recognize the validity of the title held under the Susquehanna Company, but to quiet the possession of those who were the real occupants of lands under that claim."

Brackenridge, J. :

"What was the foundation of the interposition of the Legislature? Not a grant from Connecticut under a pretended or alleged extent of charter. Not any title derived from a Susquehanna Company under an alleged purchase from the Indians. It was a moral obligation, and I have always considered it a moral obligation to relieve the mistaken and misled inhabitants who had settled on these lands under an idea of right, and where the situation of things and the nature of the case furnished a ground of mistake, so that they were not to be considered absolutely in the light of *voluntary trespassers*, more especially as Indian hostilities, incited by the general enemy with whom we were at war, were combated by those very settlers at their outposts, where many of them fell, and

at whose perils and by whose suffering the interior of the State had been so much defended."

In *Dailey vs. Avery, 1818, 4 S. & R., 237*, the Court say :

"It would be monstrous if one could acquire title under the State at the very moment in which he was violating her laws, and by the very act which was in direct violation of them. Neither plaintiff nor defendants have a vestige of legal title before the act 4th April, 1799, because, before that period, their possession was considered *tortious*."

In *Satterlee vs. Matthewson, 1825, 13 Sergeant & Rawle, 133*, Tilghman, C. J. :

"It is very clear that one who entered on land in Pennsylvania, under a title derived from the State of Connecticut, acquired no right in law or equity."

Gibson, C. J., in *Bird vs. Smith, 8 Watts, 441* :

"It is argued, however, that the certificate of the commissioners (in 1808) was the *origin* of a new grant, which, supplanting the Connecticut title, purged the land of its incumbrance, and that it consequently extinguished any grant of the easement in question, which existed at the time. The act of 1799, and its supplements, however, were passed, *not to extinguish*, but to confirm the Connecticut title within a particular district. The primary one was treated as confirmatory in *Avery vs. Dailey, 4 Sergeant & Rawle, 231*; and that it was not styled so in the Act itself, is probably because an obnoxious Act bearing that name had just been repealed," (the Confirming Act.) Its provisions, however, were *confirmatory*. Its declared object was to ascertain the settlers' right for confirmation by patent. It is certainly true that a conveyance on the basis of a Connecticut right, was declared to be illegal by the act of 1802, and it must be admitted that scruples were felt by some of us on that head, in *Barney vs. Sutton*, which was consequently ruled on another point; but from the operations of that act were expressly excluded all the lands in the seventeen townships which were, or should be, submitted to the commissioners under the act of 1799. *Even had the assertion of such a title been previously unlawful on the ground of general policy, the proviso would have implicitly legitimated it in the excepted instances.*"

Judge Scott, Common Pleas, Luzerne county, reported in *Barney vs. Sutton* :

"The Legislature, by their act before referred to, prior to 1787, recognized an *equitable claim* in the settlers, and by the confirming law of that year did, in fact, confirm them in their possession. It is believed that by this act, the Legislature intended to go further than merely to recognize an equitable claim in the Connecticut settlers in the *seventeen townships*. An equitable right to their possessions seems intended to be recognized, and the considerations upon which that right was founded, are clearly and specially set forth in the preamble. It is not known that the right was ever afterwards denied by the Legislature, but on the contrary, it is believed to have been universally admitted. The only difficulty which seemed to present itself, was how this right could be constitutionally secured."

VIII.

THE COMPROMISE ACT OF 1799.

We have now reached the beginning of the end. On the *4th April, 1799*, the Legislature passed an act entitled "An act for offering compensation to the Pennsylvania claimants of certain lands within *the seventeen townships, in the county of Luzerne*, and for other purposes therein mentioned." Its material sections are as follows, (the others refer to details of execution): the first section fixing the status of the Pennsylvania claimants, the fifth, that of the Connecticut claimants:

SECTION 1. That Isaac Wheelen, of Chester county; Thomas Boude, of Lancaster county; and General William Irvine, of Cumberland county, be, and they are hereby appointed commissioners, whose duty it shall be carefully to examine and ascertain quantity, quality, and situation of all lands lying within what have been commonly called and known BY THE NAME OF THE SEVENTEEN TOWNSHIPS IN THE COUNTY OF LUZERNE, held or claimed under a Pennsylvania title, under a patent, or a location, or warrant, *before the decree of Trenton*, by which the right of jurisdiction was declared to be in Pennsylvania, on which a survey has been executed and returned agreeably to law, and to divide the same, according to their value, into four classes, distinguished by the name of the first, second, third, and fourth class, the first class to contain the lands of the greatest value, and the second, third, and fourth classes those of inferior value, preserving a due proportion between each, and shall adjudge what sum per acre each Pennsylvania claimant shall receive, not exceeding the rates hereinafter mentioned: *Provided, always*, That nothing herein contained shall authorize the said commissioners to proceed to the performance of the duties enjoined upon them by this act, until persons claiming land to the extent of forty thousand acres under grants made by Pennsylvania, shall have conveyed and released the same to the State by deeds, duly executed, and filed in the land office, for the purpose and for the considerations expressed in this act, and until persons, commonly called Connecticut settlers, claiming land to the extent aforesaid, shall have signified in writing, under their hands and seals, duly executed in the presence of two witnesses, and filed in the land office, that they will submit to and abide by the determination of the said commissioners; *And provided*, That if part of the said land, but not to the extent aforesaid, shall have been released, or if the Connecticut claimants, to the extent aforesaid, should not make there submissions according to the provisions herein contained, then such releases as shall have been made by Pennsylvania claimants, as aforesaid, shall be null and void, and the property which shall have been so, as aforesaid, released, shall vest and be held in the same manner as if this act had not been passed: *Provided, also*, That the lines of the respective tracts of lands, so, as aforesaid, submitted to the examination of the commissioners, shall be the same as those bounding the original grants, and that the said commissioners shall not examine any lands but those which the Pennsylvania claimants shall have agreed, as aforesaid, to submit to their examination. * * *

SECTION 5. *And be it further enacted by the authority aforesaid*, That it shall be the duty of the said commissioners also to ascertain all the rights or lots within the THE SAID SEVENTEEN TOWNSHIPS, which were occupied or required by *Connecticut claimants, who were actually settlers there at or before the time of the said decree at Trenton, and which rights*

or lots were particularly assigned to the said settlers prior to the said decree, agreeably to the regulations then in force among them, and to divide the said rights or lots into four classes, to be distinguished in the manner hereinbefore mentioned, according to their respective value, taking into consideration both the quality and situation, and make out certificates therefor, with a draft of the survey thereto annexed; and in case the said original settlers, their heirs or assigns, shall make application to the Land Office at any time before the first day of January, in the year of our Lord one thousand eight hundred and one, and agree to pay to the Commonwealth, by eight equal annual installments, at the rate of two dollars per acre for lands of the first class; at the rate of one dollar and twenty cents per acre for lands of the second class; at the rate of fifty cents per acre for lands of the third class; and at the rate of eight and one-third cents per acre for lands of the fourth class; with interest upon each installment till the same is paid; whereupon patents for lands so certified shall be issued from the proper office, paying the legal fees for such patents, and also the surveying fees: Provided nevertheless, and it is hereby expressly ordered, That no patents shall issue to affect any lands, the titles whereof shall be in any person or persons claiming under Pennsylvania, until such person or persons have conveyed their title to the Commonwealth: And provided also, That the lands to be granted to any Connecticut claimants by virtue of this act, shall be mortgaged by such claimant or claimants, for the payment of the principal and interest of the aforesaid instalments due to the Commonwealth as aforesaid.

The Pennsylvania claimants refused or neglected to execute their releases. They were to be paid in land or money. The Connecticut claimants, with the memory of the repeal of the "Confirming Act" still fresh, exhibited little inclination at first to take the benefit of the law.

This was remedied by the act of *6th April, 1802*, which required the commissioners to survey, value, and certify *the whole* of each tract claimed by a Connecticut claimant, and turned the Pennsylvania claimant, not releasing, over to a jury to award compensation.

By act *4th April, 1805*, "Westmoreland records" were authorized to be deposited with recorder of deeds in Luzerne county, and *certified copies made evidence.*

By act of *9th April, 1807*, Pennsylvania claimants of lands under title previous to "the Confirming Act" of 28th March, 1787, were permitted to release, and the commissioners in examining Connecticut claims, submitted and to be submitted, "*shall not require the same lands to have been occupied prior to the decree of Trenton, but the same lands to the several applicants certify, if under the rules and regulations of the Susquehanna Company, at any time they should otherwise thereto be entitled.*"

By act *28th March, 1808*, all powers of the commissioners are suspended, and they are required to deposit their books, records, papers, &c., with the Secretary of the Land Office.

Judge Cooper, of Lancaster, (with his assistants, General Steele and Mr. Wilson,) executed these laws with great fidelity and intelligence. By October 20, 1802, about one thousand Connecticut claimants had exhibited their titles. He went through the seventeen townships, re-ran all the surveys of the Susquehanna Company, by whose lines the claims were bounded, and issued "certificates"* to the holders upon which the State issued the patent. Between Connecticut claimants this "certificate" was conclusive, *Dailey vs. Avery*, 4 S. and R., 281; but it did not conclude a Pennsylvania claimant. *Enslin vs. Bowman*, 6 Binn., 462.

In all, as the records show, the commission issued seventeen hundred and forty-five certificates, embracing two hundred and eighty-eight thousand five hundred and thirty-two acres.† One hundred and ninety-seven Pennsylvanians gave deeds of release to the Commonwealth.‡§

* For form of "certificate," see Appendix VI.

† In detail, as follows:

	Acres.	No. of "certificates."
Wilkes-Barre,	14,375	186
Kingston,	17,390	151
Newport,	17,969	133
Salem,	15,428	105
Huntington,	19,479	176
Hanover,	18,268	181
Exeter,	26,392	83
Pittston,	20,502	123
Claverack,	17,713	29
Springfield,	28,679	82
Northmoreland,	17,200	69
Braintrim,	17,379	66
Providence,	16,730	85
Putman,	22,859	69
Plymouth,	18,159	256
Ulster,	112	1
Bedford,	None.	
Total,	288,532	1,745

‡ These were distributed through the townships, as follows:

Kingston,	24	Providence,	7
Pittston,	6	Newport,	14
Hanover,	18	Putman,	10
Braintrim,	10	Wilkes-Barre,	12
Springfield,	11	Huntington,	4
Northmoreland,	14		
Exeter,	9		197
Bedford,	35		
Plymouth,	24		

Many of these were non-residents, who held large blocks of "wild lands."

§ See Appendix No. V.

The practical and legal effect of this legislation* will best appear from the decisions of the court.

I quote from the opinion of the Supreme Court in *Enslin vs. Bowman*, 6 Binn., 470.

"It is to be remarked, that the act of 4th April, 1799, left it optional with the Pennsylvania claimant to release or not, and unless he released, the commissioners had no power to grant a certificate in favor of a Connecticut claimant. But the act of 6th April, 1802, went further, and authorized the commissioners to certify not merely such parts of the tracts of land claimed under the title of the Susquehanna Company as should be released by the Pennsylvania claimant, but "the whole of each tract claimed by a Connecticut claimant, who should establish his title thereto in the manner prescribed by the act of 4th April, 1799," whether released to the Commonwealth by the Pennsylvania claimant or not. The act then goes on to provide, that such Pennsylvania claimant as should not release to the Commonwealth under the provisions of the said act of 4th April, 1799, on or before the 1st of August, 1802, should be disabled from recovering the land in any action against the Connecticut claimant in whose favor a certificate had been issued, but might institute an action against the Commonwealth in which he should be entitled to recover a just compensation for his land.

"Hitherto we see that no Connecticut claimant was entitled to a certificate, unless he derived title through a person who was a settler prior to the decree of Trenton; nor could any Pennsylvania claimant release to the Commonwealth, and demand compensation, unless his title accrued prior to the said decree. But by the act of 9th April, 1807, all Pennsylvania claimants were let in who had acquired title prior to the 28th of March, 1787, (the date of the confirming law), and by the same it is enacted, 'that the commissioners, in examining the claims of the Connecticut claimants, shall not require the same lands to have been occupied prior to the decree of Trenton.' * * * * *

"If, as the plaintiff's counsel seem to apprehend, this decision should produce results distressing to the inhabitants of the seventeen townships, I shall be sorry for it. I have always wished for their peace, and have done what I could to promote it by releasing all my interest in lands in those townships." * * * * *

The constitutionality of the act of 1799 has never been questioned. In one case the Supreme Court says:

"By the act of 1799, for offering compensation to the Pennsylvania claimants in certificates, in case of lands settled before the decree of Trenton, and to the Connecticut settlers of this description, patents from the Commonwealth on installments to be paid, the claim of the settler became a right, known to the law."—*Carkuff vs. Anderson*, 3 Binn., 12.

In *Barney vs. Sutton*, 2 Watts, 36, Scott, President Judge of the court of common pleas of Luzerne county, sums the matter up concisely, thus:

"At last the Legislature adopted the expedient of acting as mediators

* Members representing Luzerne county in Assembly from 1787 to 1802 inclusive;

Years.

1787. John Paul Schott.
1789. Obadiah Gore.
1790. Obadiah Gore.
1791. Simon Spaulding.
1792. Simon Spaulding.
1793. Ebenezer Bowman.
1794. Benjamin Carpenter.

Years.

1793. John Franklin.
1794. John Franklin.
1797. Rosewell Welles.
1798. Rosewell Welles.
1799. John Franklin.
1800. John Franklin.
1801. John Franklin.
1802. John Franklin and Rosewell Welles.

between the Connecticut and the Pennsylvania claimants, for the purpose of putting a final end to the controversy. *The act of the 4th April, 1799, was strictly an act of mediation. It proposed terms of settlement and compromise to the parties.* Most fortunately, the terms proposed were embraced by the parties, and THE CONTROVERSY FINALLY AND HAPPILY SETTLED."

I believe he was, historically and legally, correct in his final summary.

"At the commencement of the revolution, settlements had been effected in most, if not all, of the seventeen townships, and, in many of them, extensive improvements had been made. The settlers were a hardy, intelligent, brave, and patriotic people. During the revolutionary struggle, neither the sufferings and privations which they endured, nor the menace of the executive authority of Pennsylvania, could drive them from their settlements; nor could the offers of British gold tempt them to abandon their country, or the common cause of liberty and independence in which they were engaged. They had become so numerous that they furnished nearly one thousand men for the regular service. They did still more. They sustained, single-handed, for more than three years, a frontier war, during the most gloomy period of the revolution, and successfully repelled an enemy, whose known mode of warfare spared neither age, nor sex, nor condition.' On the 3d of July, 1778, they were attacked by a numerous body of Indians, British, and Tories, and in one disastrous battle, nearly the whole settlement were reduced to widowhood and orphanage.

"The feeble remains which escaped soon mustered, and returned to the settlement, and, until the close of the war, presented a barrier to the incursions of the savage foe.

"This is a mere skeleton of the early history of this settlement. It would require a volume to fill it up. But enough has been noticed to satisfy any one, not blinded by interest or prejudice, of the equitable claims of these people. They came into possession under color of title—such a title, too, as they honestly believed to be good, and in which they were induced to confide, by a government claiming jurisdiction over the territory. Was this circumstance nothing as a ground of equity? Were the improvement and possession of the country nothing? Were the sacrifices, and sufferings, and privations of the people, in defense of the country, and in the common cause, nothing? Are such a people to be considered outlaws? To this last question, I adopt the answer of the late chief justice, in the case of *Satterlee vs. Matthewson*: 'God forbid! they are not to be so considered.' Considerations like these have uniformly been regarded as sufficient in Pennsylvania to ground an equity. The principle has been carried further. Our statute books, and the decisions of our courts, furnish numerous instances where like considerations have been deemed sufficient grounds of equity in favor of those who had taken possession of lands, without title or color of title, and in favor of those who had taken possession in violation of the positive enactments of the Legislature; as in the case of lands not purchased of the Indians."

It remains to "note" what became of our old neighbors, "the half-share men," and the owners of the "pitches" outside of the seventeen townships.*

The Legislature set out by "outlawing" them. By an act *11 March, 1800*, it repealed the *general act* for the limitation of actions, entitled "an act for the limitations of actions to be

* In 1802, by petition to Congress, the Connecticut claimants not resident in the Seventeen townships, made one more and the final effort for relief. The committee to whom the petition was referred, dismissed it on the ground that the whole matter had been settled by the decision in *Vanhorne vs. Dorrance*.

brought for the inheritance or possession of real property, or upon penal acts of Assembly," passed on the 26th March, 1785, and declared it of no effect "within what is called the seventeen townships in the county of Luzerne, nor in any case where title is, or has at any time been, claimed under what is called the Susquehanna Company, or in any way under the State of Connecticut, for any lands or possessions within this Commonwealth." A supplement to the "intrusion law" was enacted *16 February, 1801*. John Franklin, then in the Assembly, voted for this act; *reason not given*. On the *6 April, 1802*,* they passed an act, the material section of which is as follows:

"An act to maintain the territorial rights of this State, and protect the property of persons holding lands under the same."

"WHEREAS, Certain persons under the pretence of title, derived either from the State of Connecticut or from certain companies known by the names of the Connecticut Susquehanna Company and the Connecticut Delaware Company, to a considerable extent of territory within this State, have, by various improper practices, long endeavored to defeat the execution of the laws of this State, and to defame the titles of persons holding lands by grants from this State or the late proprietaries before the revolution. In order, therefore, to counteract such practices and to preserve the just rights of this State:

SECTION 1. *Be it enacted*, That from and after the first day of May, next, no conveyance to be made of any land within the counties of Luzerne, Lycoming, and Wayne, shall be good or effectual to pass any right, title, or interest to the land in such conveyance mentioned, unless derived from this State or the late proprietaries thereof, before the fourth of July, one thousand seven hundred and seventy-six, and unless the said conveyance shall expressly refer to and recite the substance of the warrant, survey, patent, or title under which the same is so derived from this State or the late proprietaries thereof, before the said fourth of July, one thousand seven hundred and seventy-six; and if any judge or justice shall take an acknowledgment or proof, or any recorder of deeds, or any other person shall record any deed which shall not have been derived as aforesaid, he shall, for every offense, forfeit the sum of two hundred dollars, which forfeiture shall be recoverable by action of debt in any court of record in this State, the one half thereof to the use of the Commonwealth, and the other half thereof to the person who shall sue for the same; and such acknowledgment and recording shall be void and of no effect; and every such recorder of deeds so offending, shall forfeit his office: *Provided always*, That nothing herein contained shall be so construed as to make valid any conveyance heretofore made, of any pretended title or claim to land under the colony or State of Connecticut or either of the companies known by the name of the Connecticut Susquehanna or the Connecticut Delaware Company."

Out of this act was *excepted* the claimants and lands within the seventeen townships "for which claims have been or shall be submitted to the commissioners, under the act of 4th April, 1799."

In the case of *Irish vs. Scovel, 6 Binn., 57*, the expression of the Court is: "the manifest object of this act appears to have

* All the members of Assembly voted for this act, except Franklin, of Luzerne, and Porter, of Fayette.

been to continue the kindness which had been extended to the seventeen townships, *but to cut up by the roots the title of Connecticut in all other parts.*"

The act accomplished its purposes. Craft, *History of Bradford County*, says: "Want of support, the increasing number who were securing Pennsylvania titles, defection in their own ranks, and the growing power of the State, finally induced the most ultra of them (half share men) either to submit to the laws regulating titles or leave the State."

All the foregoing discussion converges upon two propositions, each somewhat paradoxical:

1. In the forum of Law, Connecticut, with a title regular on its face, failed justly.
2. In the forum of Equity, "the Connecticut settlers," without other title than the "*possessio pedis*," prevailed rightly.

Thus, Mr. President, have I endeavored to comply with your request to deliver a discourse upon the "Connecticut Claims." They are covered with the dust of a by-gone century. I sincerely hope I shall not renew angry contention, even if some of the views herein expressed should provoke discussion. To me they possess an interest aside from that of the mere lawyer or antiquary.

I live upon a "certified" lot in the town of "Wilkes-Barre," founded by Major Durkee in 1769; I possess a small plot in the green cemetery at "Forty Fort:" You will be the more indulgent in my taking such views of the case as will enable me to believe *these* "claims" to be founded as well on *strict law*, as on a *sound equity* and in *good morals*.

This I do know; That the Quaker man, the German man, the Scotch-Irish man, and the Yankee man, (transfused, it is true, by the blood of men speaking all tongues,) by their attrition and inter-action, have, in mighty material energies, in charities, in schools, in churches, and freedom of conscience, created the most highly civilized Republic that has ever existed on the earth: our own free Commonwealth of Pennsylvania.—*Esto perpetua.*

APPENDIX.

APPENDIX I, (p. 5.)

BIBLIOGRAPHY OF THE CASE.

1.—¹, ², ³. *Doct. Gale's Letter to J. W., Esquire*, containing a narrative of the principal matters of a public and interesting nature, which were subjects of the debates and resolves of the General Assembly of the Colony of Connecticut during their Sessions in May, 1769. Hartford, 1769.

2.—¹. *Remarks on Dr. Gale's Letter to J. W., Esq.* Printed Anno 1769. (Signed) E. D., (Eliph^t Dyer.)

3.—¹. *Observation on a Pamphlet*, entitled Remarks on Dr. Gale's Letter to J. W., Esq., signed E. D., of which the Hon. Eliphalet Dyer is the reputed author, by Benjamin Gale, A. M. Hartford, N. A., (1769.)

4.—¹. *The State of the Lands said to be once within the bounds of the Charter of the Colony of Connecticut*, west of the Province of New York, Considered. By the Publicks Humble Servant. * * * New York, 1770.

5.—¹, ², ³. *The Right of the Governor and Company of the Colony of Connecticut* to Claim and Hold the Lands within the Limits of their Charter, lying west of the Province of New York, Stated and Considered: In a Letter to J. W., Esquire. Hartford, 1773.

6.—¹, ², ³. *Plea in Vindication of the Connecticut Title* to the Contested Lands lying West of the Province of New York Addressed to the Public, by Benjamin Trumbull, A. M. New Haven, 1774.

7.—¹, ², ³. *An Examination of the Connecticut Claim* to Lands in Pennsylvania, with an Appendix Map. Philadelphia, 1774.

8.—¹, ². *Report of the Commissioners Appointed by the General Assembly* of this Colony to Treat with the Proprietaries of Pennsylvania Respecting the Boundaries of this Colony and that Province. Norwich, 1774.

9.—¹. *The Susquehannah Case.* (Norwich, 1774.)

10.—¹, ². *The Susquehannah Title Stated and Examined* in a series of numbers just published in the Western Star and now republished in this form for the benefit of the public in general and all persons concerned in particular. Catskill, 1796.

11.—¹. *An Act of the General Assembly of the State of Connecticut*, holden at New Haven, in October, 1796, incorporating the Proprietors of the Sufferers' Land, so-called. New Haven, 1796.

12.—¹. *Articles of Agreement for Conducting the Business respecting the Land called the Gore, granted by patent to Jeremiah Halsey and Andrew Ward Esquires.* Hartford, 1795.

13.—¹. *Additional or Supplementary Articles of Agreement in the better Management and Improvement of the Lands belonging to Divers Persons called the Connecticut Gore Land Company.* Hartford, 1796.

14.—¹, ², ³. *The Charge of Judge Patterson to the Jury in the Case of Vanhorne's lessee against Dorrance; tried at a Circuit Court of the United States, held at Philadelphia, April term, 1795, wherein the Controverted Title to the Wyoming Lands between the Claimants under Pennsylvania and Connecticut received a decision.* Philadelphia, 1796.

15.—¹, ³. *An Important Statement of Facts Relative to the Invalidity of the Pretentions formerly made upon the Pennsylvania Lands by the Unincorporated Companies of Connecticut Claimants, and by those who Claimed under those Claimants, in a Letter from the Secretary of the Land Office to the Pennsylvania Commissioners, intended to evince the liberality of the Government and Landholders of Pennsylvania in the Act of the 4th of April, 1799, and the releases of 120 to 180,000 acres under the same.* Lancaster, May, 1801.

16.—¹, ², ³. *The Connecticut Gore Title Stated and Considered, showing the Right of the Proprietors to the Lands lately Purchased by them from the State of Connecticut lying west of the Delaware river.* Hartford, 1799.

17.—¹, ². *The Rise, Progress, and Effect of the Claim of the Proprietors of the Connecticut Gore Stated and Considered.* Hartford, 1802.

18.—¹, ². *Observations on the Wyoming Controversy* respectfully submitted to the Legislature of Pennsylvania, by Thomas Cooper. Lancaster, 1802.

19.—¹, ², ³. *A Petition Presented by Capt. Alexander Patterson to the Legislature of Pennsylvania during the Session of 1803-4, for compensation for the monies he expended and the services he rendered in defence of the Pennsylvania Title against the Connecticut Claimants, in which is comprised a faithful historical detail of important and interesting Facts and Events that took place at Wyoming, and in the county of Luzerne, &c., in consequence of the dispute which existed between the Pennsylvania Landholders and the Connecticut Intruders, commencing with the year 1763.* Lancaster, 1804.

20.—¹, ². *An Enquiry Concerning the Grant of the Legislature of Connecticut to Andrew Ward and Jeremiah Halsey, and the rights and obligations of the parties under the same.* Hartford, 1829.

21.—¹, ², ³. *A Sketch of the History of Wyoming,* by the late Isaac A. Chapman, Esq. Wilkes-Barre, 1830.

22.—¹, ², ³. *History of Wyoming.* Charles Miner. Philadelphia, 1845.

23.—^{1, 2, 3}. *The Poetry and History of Wyoming*, by Wm. L. Stone. 1864.

24.—¹. *Scheme for the Settlement of a New Colony to the Westward of Pennsylvania* for the enlargement of His Majesty's Dominions in America, for the further Promotion of the Christian Religion among the Indian Natives, and for the more effectual securing them in His Majesty's Alliance. 1755. (See Penna. Arch. Vol. 2, p. 301.)

25.—^{2, 3}. *Annals of Luzerne County*, a Record of interesting events, traditions, and anecdotes, from the First Settlement at Wyoming to 1860. By Stewart Pearce. Philadelphia, 1860.

26.—³. *The Susquehanna Case*, a part of Connecticut, opinion by Thurlow, Wedderburne, Dunning, and Jackson. 1761.

27.—^{2, 3}. *Report of Committee of Congress on Memorial of Wyoming Settlers*. About 1802.

28.—². *A Brief Statement of the Origin and Progress of the Connecticut Intrusion in the State of Pennsylvania*. 1803.

29.—⁴. *The Susquehanna Controversy Examined*: the material objection against the Connecticut title or claim answered, with some general reasoning on the whole matter, (done with truth and candour,) by Samuel Avery. (Wilkes-Barre, 1803.)

1. In Library of Wm. M. Darlington, Esq., Pittsburg.

2. In State Library, Harrisburg.

3. In Library Historical Society of Pennsylvania.

4. In Library Harrison Wright, Esq., Wilkes-Barre.

APPENDIX II, (p. 45.)

Col. Pickering, having heard that such a letter had been written and signed by the Court, in 1790, wrote to Judge Brearly, inquiring about it, and asking a copy, to which Judge Brearly replies:

“TRENTON the 4 of March 1790—

DR SIR. My first letter to Col. Neilson by some means miscarried. However I have now got his answer which is, “he has not got a copy of the letter which is wanted.” I am apprehensive it is not to be found. We had very strong reasons for writing to the President of Pennsylvania. We were fully acquainted with the peculiar circumstances of the New England settlers. We knew that many of them had honestly paid for their possessions, that they verily believed the title under which they claimed to be perfectly good, that they had cleared, built upon, and improved the lands, that in doing this they had encountered many dangers, and suffered innumerable hardships; and beyond all these things, and what cannot be estimated—many of their nearest connections had spilt their blood in defence of their possessions—

Thus circumstanced, it was manifest that they had become enthusiasts for the land,—that the reasoning of legislators and statesmen would have but little weight with them—that if the State should attempt to dispossess them, they would become desperate and a civil war would be the consequence. On the contrary, if the State should quiet them in their possessions they would become peaceable, good citizens, and that the State would compensate those who held under Pennsylvania title by giving them an Equivalent in lands or money at a less Expense than that of dispossessing the New England settlers. That therefore the interest of humanity and the policy of the State would be, to lead them to adopt the measures that we recommended. The letter bore no official authority. We subscribed it as private citizens. Nevertheless we did conceive that it would have some weight, as it would be apparent that our means of information had been better than those of any other persons who were disinterested.

I am with great respect, dear sir,

Your obedient humble Servant,

DAVID BREARLY.

Col. PICKERING.”

APPENDIX III, (p. 72.)

Speech of Col. John Jenkins.

FORTY FORT, Feb'y, 1787.

“We will gladly accept of any proposition that will bring peace, quiet us in our possessions and protect us in our titles. This is all we ask now; it is all we have asked from the beginning. Suppose we accept of the terms proposed, what guaranty have we that Pennsylvania will keep her plighted faith? She has forfeited her honor to us time and again. If we accept the provisions of the proposed law, when she finds we are tied hand and foot, she will repeal it and leave us again without remedy or hope, except in ourselves. We have repeatedly had assurance of the desire of Pennsylvania to have this controversy settled, but the measures proposed and the men sent here to effect such settlement have shown us that they will never be satisfied except with our expulsion from our lands, and our total ruin, which we will never agree nor submit to. Our fathers have been imprisoned, robbed and whipped by the Pennsylvanians; our public papers have been wickedly taken from us; they have plundered our settlements, burnt our towns, taken the lives of our friends and brethren; driven our old men, women and children into the wilderness at the point of the bayonet, with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages and totally unworthy the lead of a civilized State or nation. We have petitioned

in the most humble terms for a redress of our grievances, and to be secured in our property, our lives, and our possessions, and our petitions have been treated with insult and contempt, and been rejected. They still continue in their endless persecution with obstinate fury and uncontrolable oppression.

And yet in the face of all these facts, all this perfidy, all these crimes, we are again called upon by their perpetrators to give up our titles, and all claims and rights under them, and rely upon the clemency of Pennsylvania for any future titles or rights to our lands. God forbid that we should be foolish enough to do anything of this kind. The blood of the martyrs who have fallen in defence of our rights would cry to us from the ground should we permit their widows and orphan children to be driven from their homes and possessions out into the wide world to perish or become a public burden.

What new plan do they propose to us now? Nothing but to quiet us in our possessions for a short period until we give up our titles and they can devise and put into execution some new plan for our expulsion. We have too often experienced the bad faith of Pennsylvania to place confidence in any new measure of her Legislature, and if they shall enact a quieting law they will repeal it as soon as the Connecticut settlers submit and are completely saddled with the laws of the State. What security have we if we comply with their proposals and put ourselves in their power, that the State will not repeal the law and deal as treacherously with us as in the case of Armstrong?

The only safe course for the settlers to pursue is to stand by their titles and their possessions until Pennsylvania shall find it to her interest to do them justice by acknowledging their rights and establishing them through proper legislation. Whenever she shall do this, there will be an end of the controversy. If it be the disposition of the General Assembly of Pennsylvania to do us justice, as stated by Colonel Pickering, she can do it in that way and thus end all further trouble and annoyance to either party. But the proposal is to bind us and leave Pennsylvania free, to have us surrender our titles and trust to Pennsylvania for another, and, as the gentleman says, a better title. This we will never submit to. We have fought too long and shed too much of the blood of our best inhabitants, and sacrificed too much in defence of our titles and possessions to tamely yield them up to the threats or entreaties of Pennsylvania, and we will never do it. All we ask is justice, and that is in her hands to grant at any moment. If she will not grant this she must put up with the consequences."

APPENDIX IV, (p. 88.)

It is obviously not quite fair to print an imperfect "brief," laying bare the processes of a lawyer's thought. I hope to be justified by the lapse of time and the wide sweep of their contents in printing the *notes* which follow—one by William Bradford for plaintiff, the other by William Rawle for defendant. Judge Patterson closely followed Mr. Bradford's route through the case. Mr. Bradford appears to have been of counsel, though he did not actually sit down to the trial of the cause.

Notes of Arg't. on the Connect. Claims, by William Bradford. Original papers in Historical Society.

"The right of Penn^a Claim" admitted by the act. See last section.
Here then a solemn question arises. Can the private property of one citizen be taken away and given to another, at the will of the legislature I say *take away*, For in this case, if we lose we lose all. The first Principles of the social union are involved in this.

One of the great +— of association was to protect /', of Property.

In a state of nature tho' it may be occupied not easily preserved.

To guard agst these evils, society established.

Find the rights of property the corner stone of the legislature (?)

Thus in Magna Charta

2. Ins. 46. 50

These Principles are incorporated °/ fundamental Laws.

p. 10 Mass. § 10

119 Mary. 21 words

147 N. Carolina 12. 15. K

. . . S. Carolina 41 D

Constitution of Penna.

United States

Declaration of right of a citizen

1. Blackst

2 Montesq. 199. B. 26. ch 15.

Case of Colleg. Votes Ass^{ly} 1 Vol. 382

Act repealing it. 6 Na (?) 89. (p 17)

Case of Geo. Ad. Bat. Votes. 84 p

Votes of Council Censors

Declaration of the rights of a citizen & of a c v. XVII. p. 237.

This Principle strongly stated in Gov' Griswold's Letters

6 Ma 84 Same in Letter of Presid. Dickenson to Gov. of Connecticut.

But proofs unnecessary—it is written on every man's heart—

The public exigences may require that a citizen should part with his property—but they can never require his property to be divested without just compensation

Where that compensation is left to a Jury—seldom any cause of complaint.

1 That provision be made for a just compensation

It seems to me essential that a Jury should ascertain this.

2 That the compensation should be in the only ancient standard of value money.

Of the nature of the exigences the public must be the Judge.

As in the case of a road.—A Jury not to judge of the expediency.

So of a Canal

So to

Inconveniences is result, if it were otherwise.

So in this case one jury might think.

But when a Jury is admitted to ascertain / compensation no injustice.

If you had been authorized to ascertain—value and provision made for payment out of / public treasury.—something might have been said

The state cannot convey to the Connecticut c anything more C they V.

They may acquire it—by compelling the owners to sell it for a—and when they have paid, or secured the pay^t of it—they P to pass

The agree^t of the citizen is presumed under 5 cs: but if compensation is not made—being promised it is withholden / P

The utmost such an act can amount to is an agrm^t to confirm the title by

If this is not done, it may be called if you please a breach of faith.

But that breach of faith is not on our part. Let / state answer.

Again—if it be a breach of faith—it is a heart of faith.

Why are we to be left to / mercy or caprice of the Legislature

There is no means whereby a citizen could in — case sue a State

And the Federal Provision is on / point of annihilation.

The State having complied with its obligation to—neither are to be prejudiced—These are in status quo

A Jury must decide on the compensation.

That point seems implied in the words “and judgment of his Peers”

There is no safety if the Legislature can cut and carve for a

Republican gov^{mt} not more pure in their [others

A majority have often sacrificed the interests of / minority

Tender act—instalment laws—Bull act of N. Jersey

The assembly & the Senate are but men

They have but limited purses.

Every attempt to meddle with /6 of the citizen without just compensation b be found on

In the case of Mr. Penn—the compensation certain the act

But this not a case of *private* property

Mr. Penn never made a controversy about it.

Mr. Rawle's Notes of a "Brief."

1. mistaken in saying V. was the first white settler—
2. "*a wild scheme*"—the unauthorized opinion of an Individual—Gov. of Connecticut not the power of Gov. of Pennsylvania—not P'py—Assembly regulate all matters
- 3d. w. bound' of Connect.—
Explain from pamphlet & Smith's history of N: Y^t.
- 4th. Act divesting P'py—confirms *every other* person's land as well as the Wyoming Lands—
High sounding words signifying nothing—
5. By his own argument decision at Trenton does not determine this ques—
But the State employed the counsel—
the S. Co—also employed them but *their* cause did not come on
6. Attempt to alarm the Jury as to getting up C. charter—
Answ. no purchases made under C. *since the decree at Trenton*—
can be set up without impeaching the decree—
One showing title under purchase made *before* decree rather confirms than impeaches.
To any pretence to set up the charter in defence of a purchase *since* is *rebutted* by decree
To any pretence *before* &c—
7. Ques of future compensation unfairly introduced—
1. P. claims renounced it stubbornly & obstinately petitioned for a repeal—thus disclaiming their rights & wishing to renew a dreadful scene of bloodshed—
2. No man can lay a claim to a verdict by shewing what he will lose by his own act.
Thus if a man disputing about a bale of goods of which he is in possession sho^d *burn* it—can he tell a Jury if you find ag^t me in damages I shall have nothing left.
8. My sentiments in protest cautiously worded
Passing Judgment in a *legislative* manner—
- 9—Why if 87 act *unconstitutional* did they wait until repealed?
Why no suits brought?
- 10—Society not calculated exclusively for right of *p'py*—but other rights personal safety—*weak* from *strong*—
Every individual going into society promises to sacrifice his will to that of the whole—or of the majority—
Every law acting on property is a living instance of it—
What a motionless inert body w^d a society be without this power.
Common good requires the abolition of such refinement.
Adherence to magna charter is s^d to be the pride & pleasure of Englishmen—
Yet how many acts of parliament are made without complaint of an infringement—
Her *canals* the internal ducts & veins of her opulence

Her *roads*—distinguished for ornament & use—

Her *country hospitals*, &c supported by Blackstone—Vattel. 178—
282. *adidem*—

It is a plain & obvious distinction between a Prince & the sovereign power of a state—

Princes—hereditary rulers fond of grasping at power—

Like S^d and Freeport in Spect. never enough till they have got a little more—

They must be restrained—by whom by the people for the people's safety—

but the people cannot restrain itself—it w^d be an invasion of their own powers to pursue their own safety & happiness

It w^d be a breach of their own original contract—& if the acts of society are to be affected by the original bargain—such a relinquishment of its own powers w^d be a nullity—

The act devert'g the p'pies tried by this test—has little operation—

It confirms what added noth'g to the titles of individuals—

It pays no more than was s^d in the const. in the charter, in every patent issued—in every title conveyed—

To this act the same exception applies as to the general principle viz. That when the occasion arises—the good of the whole must prevail—

confirming law is *not* a decision of private right—

It does not determ. which of the two has a better right—

It decides not in favor of C. right—if it decides *at all* it decides in favor of P. claimant.

It recites that they have a right—which the public good requires to be sacrificed

It therefore exercises its right of sacrificing it—

11. Distinction between war and peace tends to justify^{as} of an *individual* trespassing—not of the legislature—

12. Previous compensation—disting^d between tender & provision for it—in case of *canal* in P. 'twas creating a private species of p'py—
i. e. tolls out of the p'py of others—

'Twas consequentially (likely to be) of public benefit—

It might have failed of success—

Secus of *roads*—im^v of public use.

13—Q^u of compensation is in fact merely nominal—

I may set a value on my property beyond w^e estima of a Jury—

pleasure grounds—endeared by the sports of infancy by the memory of lost connexions by the successful exertions of taste or fancy—dear as the ruddy drops that warmed my heart—

to oblige me to sell for £5 ♡ acre—is little different from taking it without a previous compensation—

Be it so that we have only the conditional right depending on the *rec^d of the compensation*—that if compensation not made—right not confirmed

Be it so—

P. then has contracted with us—

1. That we shall have the land at present on usufructuary right—becoming absolute by compensating P—

2. That she will compensate the P's—

During the pendency of this engagement C. have a right to retain—ag^t P.

The right to retain is absolute when compensation is made

Thus there are 3 parties each having an interest.

Afterwards P. repeals—at whose instance—the P's—with our agreement?—no—ag^t our instances—

APPENDIX V, (p. 96.)

DUNWOODY'S, Jan'y 10, 1801.

At a meeting of owners of land in the counties of Luzerne, Wayne, Lycoming, Northumberland, and Northampton, a memorial to the Legislature of Pennsylvania, on the subject of lawless intrusions on lands in those counties, was read, discussed, etc.:

MEETING, April 9, 1801.

1. *Resolved*, That in order to obtain the beneficial effects which may be expected to result from the acts of Assembly passed for the purpose of preventing and removing certain unlawful intrusions on lands in the counties of Wayne, Northampton, Luzerne, Northumberland, and Lycoming, it is necessary that the land-holders form themselves into an association.

3. *Resolved*, That the subscribers will pay in proportion to the amount of land held in those parts of the counties aforesaid, subject to the former claim of the State of Connecticut, or certain companies or persons claiming under that State.

Subscribers to the Association.

	Acres.		Acres.
Allibone, Thomas,	1,200	Binney, Horace, for self and heirs	
Burd, Edward,	8,800	of Dr. Binney,	8,000
Bingham, William,	300,000	Clifford, Thomas, and John, . . .	8,000
Bell, William,	1,800	Clymer, George,	8,000
Bond, Williamina,	30,000	Chancellor, William, & Co., . . .	8,000
Bond, Phineas,	20,000	Dunwoody, John,	8,000
Bartholomew, Edward, and J. Pat-		Drinker, Henry, for self and others,	180,000
ton,	8,600	Davis, John,	3,300
Buckley, William,	9,600	Field, John,	12,000
Buckley, William, and William		Self and estate of Daniel Wil-	
Parkinson,	8,000	lamson,	8,000
Busti, Paul for Holland Land Com-		Francis, Thomas W., for Francis,	
pany,	20,000	Ann, and family,	100,000

COUNTY OF LUZERNE.

111

	Acres.		Acres.
Fox, Samuel M., for self and others,	36,000	Rush, Benjamin,	2,400
Fox, George, and Samuel M., . . .	4,000	Sharpless, Jesse,	10,000
Hollingworth, Levi,	2,400	Sergeant, William, for estate of	
Howell, Samuel,	7,000	Sergeant, J. D.,	6,500
Hodgdon, Samuel,	5,000	Sergeant, William,	1,000
Harrison, Thomas,	5,000	Strawbridge, James,	30,000
Kuhn, Adam,	7,000	Smith, Robert,	4,000
Lewis, Josiah,	6,000	Singer, Abram, for Richard Run-	
Latimer, George,	15,000	die,	2,200
Latimer, William,	1,300	Tilghman, Edward,	75,000
McPherson, William,	5,000	Turnbull, William,	4,000
McEwen, Thomas, & Co.,	25,000	Travis, John,	5,000
Meredith, Samuel,	80,000	Tilghman, William,	2,800
Meeker, Samuel,	6,000	Warder, Jeremiah, Parker & Co.,	20,000
Menshall, Christopher, Ex'r to		White, William,	12,000
Thomas Paschal,	16,000	Wells, Gideon H.,	10,000
For self and William Crammond,		Wain, Robert, for self and others,	50,000
Adam Kuhn, and assignees of		Wharton, Isaac,	36,000
Joseph Thomas,	45,000	Wharton & Lewis,	24,000
Peters, Richard,	20,000	Wharton, Joseph,	7,000
Pickering, Timothy,	10,000		
Pleasants, Samuel,	7,000	Total acres,	1,310,800
Rhoads, Samuel,	10,000		

The association organized by the election of the following officers :
 Samuel Hodgdon, President ; Samuel M. Fox, Treasurer ; John Ewing, junior, Secretary.

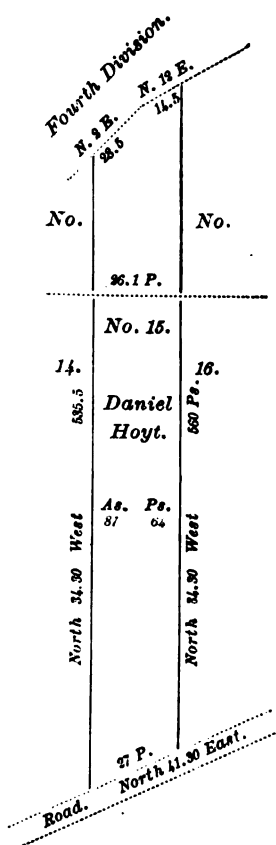
At a meeting of the association held April 13, 1801,

Resolved, That Edward Tilghman retain Daniel Smith, Charles Hall, Ebenezer Bowman, Putnam Catlin, and Rosewell Welles, as counsel for the landholders in all civil and criminal proceedings in reference to their lands.

At a meeting held at Lancaster February 17, 1802, an estimate was made of the probable amount necessary to be expended by the association to carry the intrusion law into effect, which is as follows :

Agents' salaries,	\$1,200 00
Deputy for Luzerne and Wayne,	900 00
Deputy for Lycoming,	450 00
Expenses in binding over witnesses and extra pay for sub-	
pœnaing them,	500 00
Stationery and other necessary expenses,	150 00
	<u>\$3,200 00</u>

APPENDIX VI, (p. 96.)



DRAFT of a Tract of Land situate in Kingston one of the Seventeen Townships in the County of Luzerne; being Number Fifteen in the Third Division of the said Township and containing Eighty Seven Acres and Sixty Four perches and the usual allowance of Six per centum for Roads: Re-surveyed the Tenth day of September One Thousand Eight Hundred and Two for Daniel Hoyt by order of the Commissioners duly appointed for putting in execution an Act of the General Assembly of the State of Pennsylvania, passed the Fourth day of April, One Thousand Seven Hundred and Ninety Nine, entitled, "An Act offering Compensation to Pennsylvania Claimants of certain Lands within the Seventeen Townships of the County of Luzerne, and for other purposes therein mentioned," and the Supplement thereto. To SAMUEL COCHRAN Esq.

Surveyor General.
THOS. SAMBOURN
Surveyor to the Said Commissioners
December 1st 1803.

CERTIFICATE.

WE the undersigned Commissioners, duly appointed for putting in execution an Act of the General Assembly of the State of Pennsylvania, entitled "An Act for offering compensation to the Pennsylvania Claimants of certain Lands within the seventeen Townships in the County of Luzerne, and for other purposes therein mentioned," passed the 4th day of April 1799, and the Supplement thereto passed the 15th day of March, 1800, and the further Supplement thereto passed the 6th day of April, 1802, DO CERTIFY, That Daniel Hoyt is the Owner as a Connecticut Claimant of Eighty-seven Acres and Sixty-four perches of Land in the Township of KINGSTON, one of the beforementioned seventeen Townships; being Lot Number Fifteen, in the Third Division in the said Township; WHICH Lot Number Fifteen was occupied and acquired by a Connecticut Claimant, an actual Settler there before the time of the Decree of Trenton, and was particularly assigned to such actual Settler, prior to the said Decree, agreeably to the regulations then in force among such Settlers. The said Land (a Draught of Survey whereof is hereto annexed) is included in the application of Daniel Hoyt, under the provisions of the acts aforesaid; of which application an official transcript has been transmitted to us from the Land Office of the Commonwealth of Pennsylvania.

November 10th, 1803.

THOMAS COOPER
JNO. STEELE

APPENDIX VII, (p. 24.)

The following copy, furnished me by Hon. John B. Linn from the papers of Mr. Yeates, will show where "the sinews of war" came from for Col. Plunket's expedition to Wyoming. The Proprietaries in those days were engaged in troubles elsewhere, which absorbed their attention and funds; the burden of "defence" was thus thrown upon private citizens; it does not appear, however, that these subscriptions were ever called for or paid, and Plunket's expedition must have cost a sum vastly larger than their aggregate.

PHILA., Oct. 9, 1775.

WHEREAS, It is necessary to assist the inhabitants of Northumberland and Northampton counties in protecting their property and preserving the peace of those counties: We hereby promise to pay the sums annexed to our respective names for that purpose when called upon by the treasurer of the committee appointed to receive the same, or any other person authorized by the said committee.

Turbutt Francis,	£50	John and Jesse Lukens, . . .	£20
Edward and Joseph Shippen, . . .	40	Robert Morris,	25
James Tilghman,	25	Samuel Meredith,	25
Tench Francis,	25	Matthias Slough,	15
Andrew Allen,	20	Charles Stewart,	30
John Cox,	20	David Shakespeare,	12
William Smith,	20	Owen Biddle,	10
Henry Keppeler, junior,	20	William Sitgreave,	10
John Musser,	10	Edward Milnor,	10
Reuben Haines,	50	Samuel Garrigues,	10
John Vandenn,	20	John Maxwell Nesbit,	20

The names on the opposite column are a few of those who have subscribed in Philadelphia. The committee for applying the said subscription request Jasper Yeates, Esq., Sebastian Graaf, Esq., Rev. Thomas Barton, and Mr. John Witmore, junior, to solicit and receive subscriptions for the above purpose in Lancaster county.

Signed on behalf of the committee this 11 of Nov., 1775.

JOHN LUKENS,
TENCH FRANCIS,
WILLIAM SMITH.

Turbutt Francis, whose name heads the list with a subscription of £50, was a son of Tench Francis, Attorney General of Pennsylvania from 1741 to 1755, and a full cousin of Sir Philip Francis, the author (as now generally agreed) of the "Letters of Junius." Anne Francis, daughter of Tench, was the mother of Richard Tilghman and Chief Justice Tilghman.

APPENDIX VIII, (p. 41.)

In the office of the Secretary of the Commonwealth are some fragmentary "notes" of the arguments of counsel before the Court of Trenton. The memoranda of Mr. Root and Dr. Johnson for Connecticut, and of Mr. Wilson for Pennsylvania, seem to be complete. Only the conclusions of Mr. Reed for Pennsylvania seem to be given.

There is no record of the argument of Col. Dyer in behalf of Connecticut, nor is it possible to identify the "notes" of the case for Pennsylvania, given here at some length, whether they are Mr. Bradford's or Mr. Sergeant's.

Henry Osborne, Esq., was the solicitor and agent for Pennsylvania, who gathered together the documentary evidence and marshaled the general facts.

The papers are, however, part of the official "minutes," and as such were filed with the decree before Council January 6, 1783. The same day the Executive Council resolved "that a proclamation be issued giving notice of the said decree, and also for preserving peace and quieting the minds of the people settled on the lands lately disputed between this State and Connecticut, and requiring the settlers to pay their obedience to the laws of this Commonwealth." (See Col. Rec. Vol. XIII, p. 474.)

The notes are as follows :

10th Dec^r 1782

Mr. ROOT By every principle of Law, Justice and policy you ought to decide in favour of Conn^t.

The Crown Title ought to be secure against the Crown.

Urged to a Trial when C labours under many disadvantages for want of Papers

charged with seeking delay

The justice of our Cause inspires us with Confidence:

1st Consider the Conn^t. Title—Good:

2. Penns Title void in itself.

Property belongs to the first discoverer because he providentially stumbled upon it.

When a Nation discovers a Vacant Country they have a Right to it.

2 Bla. 8 Indians have no property in lands only as far as he uses it that is Hunting though when he sells it is no more than use he applies it to

Ind^s have no permanent property in lands if otherwise it would Violate the Great Command *be fruitful &c*

The Grants of the Crown binding on the Crown

the use of those Grants are for the People & not an Ind^l.

4 Bac 211 The Grants the Crown made:

1st That to the Council of Plymouth 1620

2 Conveyance from the Council of P.—but no Orig^l papers G. W.

3 To Lord Say & Seal, under this patent the people of Ct Settle in 1635.

Pet^a to the King. In the petition of the Gen^l Court at Hartford express mention is made of this patent,

Patent of 1662.

4 Bac 213 a Violation of those Charters first began the present controversy

13th Dec^r 1782

Mr. WILSON Order of Arg^t.

Whether C has or has not a right to those Lands
prove she has not:

1 her Charter never extendd westrd of N. Y.

2 if it ever did she has long since lost that right

1st From facts before the Charter facts at the time & facts since

3^d To consider the Claims of both sides derived under the Indians

4 To suggest the Advantages or inconven^t that are likely to flow from the Decision of this Court

2 Blac—295 defin^a of a Deed

1 Bac 67 defin^a of an agreement—a concurrence of the sentiments of the parties

Vattel 2^d Book Sec 107 pg 218 gen^l Rule of Interpretation.

2 Hutch: 307 what was the intention of the parties when the Soil or Jurisdiction was granted

2 Ins: N: L: 307—9 Interpretation of intention and mode of collecting it

323—344 Grot: Puff.

1 Blac: 59—62 Deeds shall be construed according to the Intention of the parties

Calyes 6 p^e 64 B Finches Case Rule for the Construction of Deeds—Nothing is more consonant to Justice than to establish the Will of the Donor who makes the Grant

2 Bac: 661 Hobert 229 2 Blac same The Intention to govern

Vattel Boo: 2 Sec 206; Treaties to be explained by each other

2 Ist^a L. N 334—5 same subject—331

The Power of Explaining the old charters in Am^a according to equity & Intention was Vested in the Crown now in the *United States*.

Vattel B 2^d Sec 282—

Sec: 287 The Spirit & intention of the Charters is the end they had in View

Grot. 365 Puff 541

Vattel 2 B Sec 292—3

2 Ins^a L N 339 Gro 365 Puff 547 — 545 the Intention; sometimes we restrain & sometimes enlarge the meaning— Remarcable we have oftener reason to restrain then to enlarge—

— 550 Arguments drawn from conveniencys have a particular weight in the Law

When we would decide on a man's conduct we ought to place ourselves in his situation

Would we wish to read a poet with pleasure we must transport our ideas to the place and the age in which he lived

Would we judge of Charters we must not apply to the correct maps of the present Day but the vague & uncertain knowledge the makers had of N America

H:y to Cabot is Gen' & can throu no light on the subject; *only to disco*: Queen E.

Stith. His: V: 4—4 Ap*—1—2—3* *The first bounded patent in America

The two Colonies had separte Seals & the Co.y in England had the Kings own Seal for the Colony

each colony confined to 100 miles square

Stith. — 76-7 discovery of the Country of the Maniham then supposed to lye on the coast of the South Sea.

Stith 101 *New Charters 25^d May. 1609* copy in the Apx. golden South Sea dream

4 Purchers 1786 The Kings box

1822 3

Pamp:

N^o 261 Twelve years before the C: Charter a *Map* shewing the *South Sea*

4 Purch: 1870 South Sea believed to be near at hand

Those who granted and those who aplied for those patents did not know the extent of the Country

We are to determine according to what the Grantor and Grantees thought at that time and not accordg to what we know now

Plymouth pa'. of 1620: The Reason assigned in the preamble is he had enlarged the other

Dr. JOHNSON Indian title is vague & uncertain Show no title Vaid but the Crown Title

The question is a question of Right & Right & Title are synonymous in this Question

Every Title must be established according to the Laws of the Country

The General Laws of America must be the Ground on which this question is to be decided

The Law as it stood at the Time of the acquisition is binding

The Feudal sitem was the Law of all the Nations in Europe at the Time of the Discovery of America.

The French Spanish & Portugees adopted the erroneous system of Conquest

The English & Dutch the more human system of Humanity

The Indian Title is subordinate to the Crown Title and can never be set up against it

Indian titles uncertain and cannot be depended on

Will not depreciate Indian title.

Cultivation is the Regular mode of Appropriation

* Indians never Cultivate

Property grows up with Civilization and cannot be acquired without it.

Purchases from the Indians were no more than the purchasing of peace and quietness

3 Hutch: 30 Vattel 37 Sec 81 91 Indians no proprietors

Eliz: Tower Bill Opinion, Christians have a Right to take barbarians land.

all the Legislators in America have adopted these principles.

It is the law of America and must be binding on America

the Court cannot vary from them.

When this Rule is adopted and property depending on it it ought not to be shaken

On this principle we must stand that whoever can adduce a Charter Title require no more

Vattel 2 B 216 264 The Reason of the Grant is the Ground of the Grant though the Reason ceases yet the Grant continues

5 Bac: 525 There is a Legal Title and an Equitable Title

The Discovery and Charter from Cha^a the 2^d.

The Plymouth Charter and all under it are only explanatory

We do not use them for any other purpose. this we told them Early

Cabots Discovery / King took the Homage of the Natives

In the Reign of Hen: 8 some of the Natives did Homage to him sitting on his throne

The Title of Discovery is the principle by which all the Nations of Europe hold their possessions & Ratified by all their Treatys

James 1st began in 1606 to make grants or rather *Lisences*

The Patents to Virginia from Sea to Sea in the South; and to Winthrop in the North are the foundations of the American settlements

Purch: The Extent of America was as well known at that Day as at this The Surrender of the Plymouth Charter mentions 3000 miles to the South Sea

Patents have been Vacated frequently as they were often given to favourites, & policy induced the Judges to Vacate them

4 Bac 210 211 Reasons for Vacating Grants.—

1 Hutch: 34 Plague among the Indians

We only mention these Patents as Historical facts which Comprise our *Equitable Title*

a part of Narraganset River had been granted to Mass^{ch}usets the Year before

The patentees were the Associates of Lords Say and Seal &c

1 Hutch: 47

Conn^a Charter Cha^a. 2^d granted it for Valuable consideration

The Colony is the People
 The property is one thing
 The property of the Colony another
 The people another
 & The property of the People a fourth
 The property of the Colony is from the Beginning.
 The Jurisdiction of the Government extends with the Settlements
 The greatest part of the Colony was purchased of the Natives can
 mean nothing more than the actual settlement
 Char^r was liberal at the moment of granting the patent
 The South bound of this patent is the Sea whence it cannot be that
 Massch^t line is the South bounds
 On considering the location the Dutch are to be left out of the
 Question
 There is no doubt though Ingenuity has suggested many
 It is a *great grant* but it was a *Royal one*
 There is a double construction to every human grant
 If New Haven would not see that they were included in the Patent
 this Court will not shut their eyes its *absurd*
 The Charter could only incorporate the Colony of Conn^t. & N. Ha-
 ven was not within their Jurisdiction
 When the Commissioners came out with Destructive powers then
 they came into the Jurisdiction
 The passing of a patent is an Act of ownership it was a wise act to
 secure the property—
 The Possession of the Dutch is the only objection to be encountered
 They were in under a title of their own or as tenants of the Crown
 of England or as intruders—the last appears to be the fact
 4 Bac 212 it was the Spirit of the patent to except the Dutch pos-
 sessions
 661 Examine whether Conn^t. has divested herself of this property
 It requires as Strong evidence to divest as it does to invest prop-
 erty
 The Settlement in 1660 can have no effect as it was before Conn^t.
 was sufficiently invested with the property
 1 Blac 484 The Settlement in 1664 was a reassumption by the Crown
 and contrary to law Vide 16th Cha^r. 1st Vide their answ Acts of
 Assembly to 1725
 Char^r in 1664 had lost the good Nature he was possessd of in 1662
 The Settling jurisdiction was the object of the Commission
 1st All agreements are to be construed according to the subject
 matter of the agreement—
 2 They can only affect the parties to the agreement
 Not an idea in the agreement that could affect Conn^t.
 Vile agreement in 1683 but it ought to be construed strictly then it
 only Relates to N: York & Con^t.
 A Silence for a Century

Queries by the board of Trade & propⁿ of Penns^a.

1st State the facts & then meet the objection

(The following "notes" are those either of Mr. Bradford or of Mr. Sergeant. It does not clearly appear of which:)

Right of discovery

King James could not deny the Right of the Dutch though he wished to abridge it

And reserves out of the Plymouth Patent only what the Dutch actually possessed

Who had the best right to the lands in Dispute the oldest and nearest Settlers to those lands or the most remote and junior settlements

If the King had divested himself of the Jurisdiction over the lands mentioned in the Charter of C: why do the Susq^a Co.y apply and the C: Assembly recommend them to the Crown for a New Grant.

When one gives anything it is to be presumed it was his own at least he wishes it to be thought so though the presumption is not always the truth so it is with respect to those large grants, for no other purpose than to creat a Title to the Crown

1. Hutch: 48

9-317-288 Allowed on all hands that the Council of Plymouth had no Right to convey the Right of Jurisdiction

1 Day—113

As to Jurisdiction the Council of Plym: were trustees; with regard to the soil the same.

10 Cohn 110. 111. 112 A false suggestion or recital of a false consideration in a patent Vitiates the Whole

1 & 4 Cohn

2 Blac. 347-8

Indian Treaty at Lancaster in 1744

2 Vol Harrises V^a. 247 4 Purch: 1872: The King notwithstanding the Plymouth grant, granted some of the lands comprised within that Patent to others;

1 J. Cong: 33 The Act of Parliament of England extending the Bounds of Canada is frequently mentioned by Congress as a grievance but never once mentioned by C: as infringing on the Bounds of their Charter which it certainly did if their Claim to the disputed lands is Just.

53-4 The Northerly & Westerly boundaries of their Colonies

69 ——— Same Pet^a to the King

1 J: Cong. 153 2^d Addresses to the People of Britain

All the Western Lands late in the Crown of England are now the Joint property of the United States

They have no grant under the Plymouth Charter—no general proofs can prove more than general facts

To particular facts particular proof must be made—To prove a

Deed the Deed must be produced if not lost or destroyed by accident, then a Copy must be produced

N: Haven: State of the Case

Charles the 1st never signed the patent nor had C: any until M^r Winthrop obtained it in 1662

No patent to Lord Say & Seal &c

No grant from them to the people of C^t.

2 V: C. Rec 237 Decree

250 Reasons

265 Do

Her rights must have arisen from her settlements her conquests or her purchases from the Indians

The purchase made from the Indians on Delaware were made by the people of N Haven then a separate Gov^t from Con^t

They were made by people who then deny'd the Charter of Con^t. & all the Authority it would give

2 V: C: Rec. 14 N Haven Colony sent men to purchas from the Indians at Delawar bay but expressly forbid to medle with any thing the Dutch or Sweads had a Right to

Why produce the Indian purch. in Delaware State if not to keep up the Idea of their Claim to that State

Do. 37 why make them now if this is not their Idea

Let us discover their limits

Do. 73-4 The Dutch declare they have a Right to Con^t. River and that they purchased of the Natives long before the English settled there

2 N C Rec 280 By liberty of the N: C: Con^t. were permitted to take two Towns on Long Island into their Protection

1662 The recitals in the Charter will shew us what was asked and what was intended to be granted, viz

"The greatest part was purchased at a great expence and some parts conquered.

If the Gov^t. of Boston was too remote for Con^t. can a Country 1000 miles distant be more convenient for the Gov^t. at Hartford.

348 Kings letter to the Gov^t. of N Haven Conn^t. &c dated after the Granting of C^t. Charter

21st June 1663 which shows the Crown had no intention of involving N: H: in the C^t. Charter

367 380 The union of N: H: to be interpreted as their own Concession and not otherwise

That Con^t. could not extend farther Westward than N: H.

Instructions 1683 10th & 13th Queries in 1680

Queries in 1730 Official Declarations Con^t. to the Crown in 1774 She changed her note well knowing her former Declarations were repugnant to her claim.

Con^t. Acts of Assembly 110-111 To settle & dispose of all the Vacant lands in the Colony

280 County of Litchfield Act. Their Western line

Conn^a frequent settlements of Boundaries have long since barred her right if it ever existed.

In 1650 *Dutch Settlement of Limits* If it never was ratified the words of the argument are binding

1656 Ratified by the Dutch.

1664 1731-2 1803-4

Indians the true proprietors of the Soil.

The first settlers under the Plymouth Charter were Relieved from Famine by the Corn purrb^d from the Indians.

Hutch 15-16 Colden 33-4 Dutch settle in 1609 and 5 Nations Indians kindly treated by the Dutch

Policy of the Division.

Mr. REED The Title of Penns^a stands on the clearest ground abstracted from that of Connec^t.

Our Title consists of both the Crown and the Indian title

That all titles should be derived from the Crown is the law of Britain and only applicable to Britain

3 Hutch 30

DECREE

This Cause has been well argued by the Learned Council on both sides.—

The Court are now to pronounce their Sentence or Judgment.—

We are unanimously of Opinion that the State of Connecticut has no right to the Lands in Controversy.—

We are also unanimously of Opinion that the Jurisdiction and Preenption of all the Territory lying within the Charter boundary of Pennsylvania and now claimed by the state of Connecticut do of Right belong to the State of Pennsylvania.—

W^m. WHIPPLE
WELCOME ARNOLD
DAV^d. BREARLY
CYRUS GRIFFIN
W^m C. HOUSTON

Trenton 30th Dec^r. 1782

APPENDIX IX, (p. 54.)

Upon receipt of the decree at Trenton the authorities of Pennsylvania, on the 6th January, 1783, issued the following:

"A PROCLAMATION.

"WHEREAS, The Court of Commissioners, constituted and declared by the United States, in Congress assembled, to hear and finally determine the controversy between this State and the State of

Connecticut, respecting sundry lands lying within the northern boundary of this State, having heard the said States respectively thereupon, proceeded, on the thirtieth day of December last, to give judgment in the words following, to wit:

'We are unanimously of opinion that the State of Connecticut has no right to the lands in controversy. We are also unanimously of opinion that the jurisdiction and preëmption of all the territory lying within the charter boundary of Pennsylvania, and now claimed by the State of Connecticut, do of right belong to the State of Pennsylvania.'

"We have thought fit to make known and proclaim the same, and we do hereby charge, enjoin, and require all persons whatsoever, and more especially such person and persons who, under the authority or countenance of the late Colony, now State of Connecticut, either before or since the Declaration of Independence, have entered upon and settled lands within the bounds of this State, to take notice of the said judgment, and pay due obedience to the laws of this Commonwealth.

"*And whereas*, There is reason to fear that the animosities and resentments which may have arisen between the people, who under the authority or countenance of the said late Colony, now State of Connecticut, as aforesaid, have made settlements within the bounds of this State; and the citizens of Pennsylvania who claim the lands whereon such settlements have been made, may induce some of the latter to endeavor to gain possession of the said lands by force and violence, contrary to law, whereby the peace of the State may be endangered and individuals greatly injured, we do hereby strictly charge, enjoin all persons whatsoever, to forbear molesting, or in anywise disturbing any person or persons who, under the authority or countenance of the late Colony, now State of Connecticut, as aforesaid, have settled lands within the bounds of this State until the Legislature or courts of justice shall have made laws or passed judgment in such case as to right and justice may appear to belong, as such persons offending therein shall answer the contrary at their peril. And we do hereby charge, enjoin, and require, all judges, justices, sheriffs, and other peace officers, to use their authority to prevent offenses, and to punish, according to law, all offenses committed, or to be committed, against any of the people so, as aforesaid, settled under the authority or countenance of the said late Colony, now State of Connecticut, as aforesaid, on lands within this State, and who pay due obedience to the laws thereof, as in case of like offenses against any of the citizens of this State.

"Given in Council, under the hand of the President and the seal of the State, at Philadelphia, this sixth day of January, in the year of our Lord one thousand seven hundred and eighty-three.

"JOHN DICKINSON.

"Attest:

"T^Y MATLACK, *Secretary*.

"God save the Commonwealth."

APPENDIX X, (p. 96.)

The following letters from the Commissioners appointed to carry into effect the operation of the act of April 4, 1799, and its supplements, will give an insight into the difficulties encountered, the spirit of the settlers and their feelings of distrust, and the patience and fidelity which characterized the execution of the laws. It will be curious to note the fact that Judge Patterson was credited with the opinion that "the confirming law of 1787 was yet, (1800,) in some respects, in force."

WILKES-BARRE, LUZERNE CO., *21st July, 1800.*

SIR: We find many difficulties in the execution of the act offering compensation to the Pennsylvania claimants of land in the county of Luzerne, particularly as we apprehend some of the enacting clauses are directly opposed to each other. We conceive it, therefore, to be necessary, indeed our duty, to apply to you, as Attorney General of the State, for your opinion and advice.

First section. "That the said Commissioners shall not examine any lands but those which the Pennsylvania claimants shall have agreed, as aforesaid, to submit to their examination."

Fifth section. "That it shall be the duty of the said Commissioners, also, to ascertain all the rights or lots within the Seventeen Townships, which were occupied or acquired by Connecticut claimants who were actually settlers at or before the Decree of Trenton, and which lots or rights were particularly assigned to the said settlers prior to the said decree, at Trenton, agreeably to the regulations then in force among them."

We ask, Shall the prohibition in the first section prevent the Commissioners from ascertaining and valuing the Connecticut rights or lots within the seventeen townships where the Pennsylvania claimants have not released to the State?

The transfers and sub-divisions have been so numerous among the Connecticut claimants themselves, that it will be a work of years, if the Commissioners must attend to this minutiae.

Question, then, Are the Commissioners to ascertain and value the *original* rights or lots (only) of the Connecticut claimants, or must they ascertain and value the numerous divisions and sub-divisions of those original rights or lots, as they are *now held*?

In the progress, although there are other difficulties, we are unwilling to trouble you with more than what consider indispensably necessary. In the meantime, we will proceed in such parts of the business as do not require decision on these points, and we take the liberty to mention to you that we judge it prudent to conceal our embarrassment, and to appear to act as if the law was clear to us in every particular.

We request your answer as soon as convenient, by post, and are, respectfully, sir,

Your obedient servants,

THOS. BOUDE,
WM. IRVINE,
ANDREW PORTER.

P. S. We will communicate to the Secretary of the Land Office such other difficulties as occur, in detail.

JOSEPH B. McKEAN, Esquire, *Attorney General*.

Mem. forwarded per mail of 23d instant.

WILKES-BARRE, LUZERNE CO., *July 22, 1800.*

SIR: Your letter of the 17th ultimo, with its several inclosures, addressed to General Irvine, was laid before us by him on his arrival at Wilkes-Barre.

In the necessary enquiry to elucidate our business, we have procured several documents and copies of proceedings, of which we will take copies or extracts, and we mean to collect everything which may be useful in your office, or for the State to possess; but we cannot think of asking title papers or what the owners might deem such.

We took for granted before we entered on this business that we should have to encounter several difficulties, but many have since arisen which we presume not even the framers of the law themselves, much less any other person, foresaw. Some of them appear to us so stubborn that we have thought it necessary to apply to the Attorney General of the State for his opinion, and supposing it not improbable that an official communication may take place between you and him on the subject, we thought it not improper to furnish you with a copy of our letter to him, more especially as we shall have occasion to trouble you from time to time with sketches of our proceedings, and other matter not altogether irrelevant.

In the abstract No. 4, with which you were pleased to furnish us as *incomplete* in the several respects mentioned, you will find on examination, or particular consideration of the subject, (which we earnestly recommend,) manifold obstructions to the business. The releases of the Pennsylvania claimants, alluded to in abstract No. 4, are not only incomplete so far as respects their own rights, but as no limits or bounds are fixed, the ground, tracts, lots, or surveys, not identified, it is impossible for the commissioners to know where the land lies that has been actually released to the State conformably to the law, consequently their valuing the Connecticut claims can answer no good purpose, but possibly the contrary. These incomplete releases are to a considerable amount, and to these may be added the conveyances made by the agent of the Penn family to their manors. The terms or expressions are vague, loose, uncertain, and tend to

confuse and obstruct the business. We refer you to the original instruments, the tendency of which we conceive could not have been sufficiently *adverted* to. The aggregate of these incomplete releases, including the manors, amount to about forty-five thousand acres. Besides the foregoing we find, on accurate examination, that several claims of Pennsylvanians, regularly released, will fall without the seventeen townships.

We were led to believe that an agent for the Penn family, together with persons for the Pennsylvania claimants generally, would ere now have come to the ground to show their lines, and do other needful things; but in this we are disappointed, and it would appear that they are indifferent about the matter. Be this as it may, it seems to us extremely necessary that some steps should be taken as soon as possible to bring those persons to make such releases to the State as the law requires, or explicitly to declare that they do not intend to. As it now stands it is deceptive, and has an evil tendency. We cannot learn with certainty to whom the Penn family have conveyed tracts within their manors, except to Vanhorn, who brought suit and recovered, but we do not even see his name among the releases, nor should we know others with certainty if we saw them.

As far as we yet have had communication with the Connecticut claimants they generally seem pretty well disposed to have the law executed; but as there is no general rule without exception, we apprehend there are as many here as to make it necessary to act with caution.

If the fifth section should be construed to authorize valuing Connecticut claims to lands not released by Pennsylvania claimants, will it not be, at best, useless for the commissioners to proceed to give them certificates? Suppose, for instance, a Connecticut claimant goes forward to the Land Office with his certificate, and he understands for the first time that the Pennsylvanian has not released to the State, and of course he is refused a patent, what will the consequence be? He will in all probability return to the country highly disgusted, a general alarm will take place, and the complaint will be that the law has been a trap, they are put to trouble and expense, and are as far from a title as ever. In short they will have real cause of complaint.

That we may not be idle in the meantime until we gain more information, and hear from the Attorney General and you, we employ the surveyors in running the external lines of the townships and manors; and perhaps we may value some Pennsylvania rights that may be convenient and clear of dispute.

If we should have to value lots to the Connecticut claimants who *now hold*, it will be immense labor. They are so cut up, and yet without that it is not easy to see how they are to obtain titles. You have a sketch enclosed, by way of example, which gives an idea of the difficulty.

The Connecticut claimants have strong apprehensions that the surveying, and other office fees, will amount to too much, particularly if exacted on small lots as now held in many instances down to half and quarter acres. Some persons hold six, eight, or ten lots, the whole perhaps not amounting to twenty acres.

Many of the Connecticut claimants do not see the use of the oath of single title being administered to them. They seem to think it a new thing, for that otherwise it would have been required at the time they submitted. They add, as argument, that a precept would have been furnished to *them* as well as to the Pennsylvanians at an early period if necessary. Notwithstanding as we are invested with authority by the law to administer the oath, we mean to do it exactly in the words therein prescribed; but we conceive it will be unnecessary and perhaps impolitic to give them the trouble to go before a judge. There is no need for new stimulants.

Are the manors, reserved by the Penn's for their own use, to be considered *original grants*, or are the grants made by them to individuals in those manors *original grants*? See the act, section one.

Ten or a dozen Connecticut submissions have been offered to us since we came here, which, for the convenience of the applicants, we will forward to your office the first opportunity.

Mr. Bowman, of this place, called on us respecting his brother Samuel Bowman's release of a Pennsylvania title to the State. He says it was regularly executed with all the forms of law, and acknowledged before Justice Covell; that there must be a mistake at the Land Office.

We are, with respect, sir,

Your obedient servants,

THOS. BOUDE,
WM. IRVINE,
ANDREW PORTER.

TENCH COXE, Esquire,

Secretary Land Office, Pennsylvania.

WILKES-BARRE, LUZERNE CO., PA., Aug. 5th 1800.

SIR: We have to acknowledge the receipt of your letter (with its enclosures) of the 12th July.

We transmit you herewith, eighteen Connecticut applications, which have been handed to us for that purpose.

If you will be pleased to examine the release of James Rose, you will probably find it incomplete. Perhaps it is an error in the copy sent us, as we are unwilling to suppose an intentional deception in the releasor. This lease, agreeably to the exemplification in our possession, commences by particularly naming the several late Proprietaries, with their additions, as if they had been the parties of the first part to the deed, when a sudden transition takes place to the

clause of transfer to the Commonwealth in the third person, singular; the *habendum et tenendum* clause is usually correct; and James Rose's signature is the first mention of his name, except in a very brief, accidental recital, towards the close of the instrument.

It is generally said and credited here, that the act of Assembly, passed the 28th day of March, 1787, commonly called "the quieting act," or "confirming law," (though repealed.) is determined to be, in some respects, yet in force; this is the opinion, say the Connecticut claimants, of Judge Patterson. Hence, they argue that they will have a right to obtain Pennsylvania titles at the rate of fifty shillings per hundred, for all lands settled by them before and since the Decree at Trenton, whether within or without the seventeen townships, unless Pennsylvania warrants were previously laid. They therefore deem it unnecessary to apply (under the present law) for lands not *claimed* by Pennsylvanians.

There appears great anxiety in a few individuals to know almost every minute step of our proceedings. They express a strong desire to have the business speedily accomplished, and, at the same time, intimate their opinion that the law might have been contrived better, and in such manner as to have been more easily executed. They tease us with so many inquiries—whether certain things can be done under the law; and whether we do not construe particular clauses *so* and *so*, that if their conduct is not insidious, they are themselves more ignorant than we believe them to be.

We are going on much in the same way as when we wrote you of the 22d ultimo. We hope to proceed with more confidence when we shall have received answers from you and the Attorney General, which we now hourly look for. At all events, although we shall not be able to finish the business this year, we expect to put it in such train that we, or successors, may proceed with more ease some other years.

Enclosed you have a Luzerne newspaper, in which the *doings* of the Commissioners are stated, *by consent*.

We are, respectfully, sir, your obedient servants,

WM. IRVINE,

ANDREW PORTER.

TENCH COXE, Esquire,

Secretary Land Office, Pennsylvania.

LUZERNE, August 25, 1800.

SIR: Your letter of the 12th instant, accompanied by sundry copies of releases and applications, was duly handed to us by Mr. Ross. Among the applications herewith, you will find one from the bearer, Judge Gore, whose example in coming forward will no doubt have some weight. There is another person accompanies him. What

their business is we know not, but have heard by accident that they have particular business at the Land Office.

We judge it prudent to confine our inquiries solely to the matters connected, either directly or indirectly, with the business committed to us. We cannot, however, shut our ears to common reports, one of which is reiterated, that Connecticut people still continue to buy up half-share rights without the seventeen townships. It follows, of course, that these deluded people must be encouraged by some leading characters here. There must be a system; a mere swindling scheme of an individual or two, it is to be presumed, would soon be detected. To oppose this, it is true, the people now coming to settle and purchase are extremely ignorant—as many of the old settlers are willing to purchase Pennsylvania titles, so soon as it can be ascertained who really hold.

General Boude thought, when he left this, of being only about two weeks absent. More than four have elapsed. If sickness, or other accident, should prevent his return much longer, he will doubtless notify either us or Government. If no misfortune should befall either of us, or families, we can, we hope, do everything that could be done by three, not more capable than ourselves, the remainder of this fall.

There are thirty-two applications and submissions herewith. If the Pennsylvania releases were more general, it would be much easier to do the business. We hear no more of Mr. Penn's agent than what you mentioned in yours of the —.

We are, sir, respectfully, your obedient servants,

WM. IRVINE,
ANDREW PORTER.

TENCH COXE, Esquire,
Secretary of the Land Office.

LANCASTER, November 10, 1800.

SIR: Having officially learned from the Secretary of the Land Office that the necessary amount of releases by Pennsylvania claimants, and submissions by Connecticut claimants, of lands within the seventeen townships, in the county of Luzerne, had been received at that office in order to authorize us, agreeably to a provision of the act of Assembly, to proceed upon the duties of our commission, and also that the necessary papers were in readiness, we met in Lancaster, the beginning of June last, received the papers, appointed our clerk and surveyors, and made other necessary arrangements. In the latter end of the same month we met at Wilkes-Barre, and immediately entered on the business assigned to us.

For some time after our arrival at Luzerne, the reserve of the inhabitants, and their remissness in giving information respecting the boundary lines of Connecticut surveys, and other necessary points, was but too apparent. These unfavorable appearances, however,

were gradually dispelled, and by a conduct of conciliatory and explanatory communication on our part, their confidence in the rectitude and benevolence of the Legislature, and in the disinterestedness and candor of the Commissioners, was increased, and, at length, generally acknowledged.

In the prosecution of the business, and particularly in its commencement, many obstacles occurred. In many cases papers were wanting to complete our information. Many of the Pennsylvania releases were incomplete and not to be acted upon; many of our drafts of survey were too loose and vague in description to enable us to ascertain the situation of the lands.

The quantity of land completely released being, in proportion to the contents of the seventeen townships, but inconsiderable on our first entrance on the business, and that indeed being dispersed in various parts, occasioned us not a little embarrassment and loss of time, more especially as the difficulty of finding the tracts, owing to the want of connection, was thereby increased.

The manors of the Penn family, amounting to upwards of thirty-three thousand acres, if completely released would have furnished us full scope for immediate progress, while, in the meantime, Pennsylvania claimants generally would perhaps be completing former and executing additional releases. But we found that in the releases of the manors exception was made of such parts as had been sold and conveyed, or been contracted to be sold and conveyed, within their bounds, to individuals; and the lands thus excepted not being identified, we could not proceed, respecting the manors.

We kept open a constant communication with the Land Office, advising the necessary exertions and coöperation to overcome existing and prevent future embarrassments and obstacles, and earnestly recommending the necessity of the attorney of the late Proprietaries ascertaining the issue of every contract with individuals within the manors, and furnishing us information thereof, and of the exact quantity and limits of the excepted tracts.

We think it but justice to the Secretary of the Land Office to state that the exertions in his department have been indefatigable to render as successful as possible the efforts of the Commissioners. We were from time to time furnished from the Land Office with exemplifications of further releases. Some of our difficulties of course vanished as these became more general. In the meantime our surveyors were diligently engaged where the fewest embarrassments presented.

Finding the acts of Assembly in some parts not so fitly adapted to the state of facts arising before us, we experienced some necessary hesitation in its construction; and we are the more indebted to the Attorney General of the State for his readiness to oblige us with his opinion on several cases submitted to him, as we have since learned. That to afford us any opinion was not a part of his incumbent official duty.

A circumstance of individual opposition has taken place since we left the country, of which we have received intelligence from our surveyor, whose letters we enclose for your information.

The whole history of this transaction, and the many instruments of submission received by the Commissioners while at Luzerne from Connecticut settlers to be forwarded to the Land Office, afford manifest evidence that the magistrates and people at large within the seventeen townships are zealous to have the law carried into effect.

We have the pleasure to assure your Excellency that much business has been pursued to such a length as to give us reasonable hopes that we, or our successors in office, will find a system established from which the Commissioners will in future progress with greater facility and more expedition.

Investigating the principles and objects of the commission, and the tenor and tendency of the various provisions of the acts of Assembly, critically examining and analyzing the various subject matter contained in our official papers, attending our surveyors, searching for useful information, oral and written; ascertaining and running the boundary lines of a majority of the seventeen townships, and ascertaining the situation and surveying and valuing tracts within these townships released by Pennsylvania claimants, were matters which have occupied our assiduous attention.

We think it proper to suggest that from the general knowledge we have been able to acquire of the subject in question, we conceive some eligible amendments might be advantageously made in the acts of Assembly. We feel it, however, becoming to forbear offering our opinion on these points until permission is given, or our opinion is required.

We have the honor to be, sir,

Your Excellency's obedient servants,

WILLIAM IRVINE,
ANDREW PORTER,
Commissioners.

His Excellency THOMAS McKEAN,
Governor of Pennsylvania, Lancaster.

The next letter, from Judge Cooper, (then one of the commissioners,) was written in 1804, probably to Tench Coxe, Secretary of the Land Office. The beginning of it is missing in the copy before me.

* * * * Indeed the Board of Property have not taken sufficient pains to conceal *their* opinion, nor is it to be concealed that the supplement of 1802 is at least of dubious validity, and that if it should be repealed, a measure which, unless they are grossly belied, they, or some of them, have been most industrious to promote the title of the settler, will be confined to the *released* part. In this case they will have been cajoled to give up their deeds, on the promise of a

Pennsylvania title to the *whole* lot, when, in fact, they will obtain one for a *part* only. I shudder at being considered as the instrument of such a fraud; and well knowing, as I do, the openness and decision of your character, how little there is of stratagem or concealment in your disposition, and how honorably and independently you have kept on the strait forward course of your active and arduous life, I am sure you must abhor this duplicity as much as I do.

Mr. Ellicott gave me a copy of the Attorney General's opinion, which, I have no doubt, is warranted by the case stated. What that case is I have not seen. I applied for it but it has not yet been transmitted. I am satisfied, however, it is stated in such a way as to render it impossible for Mr. McKean not to lean strongly to the expediency of inserting the released part so that Mr. Ellicott, &c., may be sheltered under the form of the patent. When they were driven from the form of the certificate, they fight now within their own trenches.

If there were not these objections, arising from the preceding history of the difficulties now afloat, I believe (from a recent examination) the interferences could be laid down and calculated on the general township draughts, in a twelvemonth, or less, but, if they are to be calculated from accurate remeasurement, it would take much more time, and treble the expense. I and my colleagues have always told the land officers that we had no objection to give the information they requested, or direct it to be given, when it did not interfere with the proper business of the commission. They have this in writing—it is contained in my letter to Mr. Cochran, a year and half—it is now going forward; general township draughts are making out, with the Pennsylvania surveys laid down over the Connecticut lots, in consequence of this promise. But when all the certificates are issued, which they will be this summer, Mr. Taylor and I will not condescend to abuse our appointment by receiving the salary of another twelvemonth merely for looking over the work of our draughtsman, which we can neither assist nor correct. It would be more than disreputable, it would be dishonest. Nor ought we to be blamed for sheltering ourselves under the requisitions of the Land Office, and receive a salary for a year or two, which we cannot earn. When we resign, we will agree with our surveyor to complete these plans for the Land Office, and, if the gentlemen of that board wish it, to calculate with the interferences.

But we cannot consent to insert in our certificates what does not belong to the title of the settlers, nor to furnish for the patent what will make the patent useless, and answer no other purpose than to excite present suspicion and future dispute. If the Land Office requires present information, to make their maps, draughts, and documents more fully accurate and correct, they shall have it. We have never lost sight of our promise to this effect. But the patentholder does not want it; the patent is all the worse to him for containing it; his title is rendered dubious, nor can he see why his deed from

the State should contain what the Legislature has declared shall be no part of his title.

Besides, since I have been here, I have been carefully examining the releases from Pennsylvania claimants, and out of about four hundred and seventy tracts released, I find about thirty-five held under double or treble claim, and not one hundred free from objection. Is the patent to contain a recital of released land, of which the release may not be worth a farthing? I submit these remarks to you because I think that, whoever may be offended, they are necessary to let you into the sentiments and feelings of the people here, and because I can rely that, whether you agree or disagree with me, you will give me credit for a desire, at least, of being right and of doing justice to the appointment in which you have placed me.

You will use your own discretion in considering this letter as a public or a private one. I am too much used to obloquy, particularly in the business of the commission, from both sides of the question, to shrink from my duty for fear of meeting it. I shall finish all my business here by October.

I remain, respectfully and sincerely,

Your Excellency's faithful and

Obliged friend,

THOMAS COOPER.

SAMUEL COCHRAN, Esq.:

SIR: We saw your letter to Mr. Beach, about Mr. Lambourne's being employed in making out township draughts and laying down thereon the Pennsylvania interferences, for the purpose of enabling you to insert a clause in the patent, to which we have insuperable objections.

Mr. Lambourne, at any rate, must be employed in the proper and necessary business of the commission, and finish that before he touches anything else. But conceiving it, as we do, highly improper to insert in the certificates anything relating to the lots released, how can we consistently go out of our proper business to enable you to put into the patent what we deem improper to insert in the certificate?

The patent is grounded on the certificate, and, in our opinion, ought not to contain any clause which the certificate does not authorize.

In fact, knowing, as we do, that the clause meant to be inserted in the patent, is perfectly unnecessary to the Connecticut claimants' title, and is expressly made so by law, we shall not be so inconsistent as to furnish you with the means of inserting in the patent a clause that can answer no other purpose than to throw doubt and suspicion on the patent itself.

We frankly confess to you our suspicions, that this clause is meant to be inserted with a view to the future repeal of the supplement of 1802, so that the Connecticut settler will have no title but to the re-

leased part; in fact, Mr. Matlack intimated to Mr. Cooper, at a meeting of your board, that the supplement might be repealed, and the title confined to the released land. In the meantime we are to be employed in collecting together all the deeds and documents of Connecticut title for the whole of each lot, under promises to the settlers in return, that their Pennsylvania titles shall extend to the whole of the land to which they have made out title. We will not consent, on any human consideration, to be the instruments of such a fraud. Your Board must act as they think right, but we will not aid you in the business. We will not directly or indirectly enable you to do what we conceive to be morally wrong. If we are mistaken in this, we shall most willingly and gladly abandon our present opinions.

As soon as we hear of patents being issued without such a clause, which even the Attorney General's opinion does not state as necessary, we will cheerfully labor to give you the information you desire.

We are, with respect,

Sir,

Your humble servants,

JOHN M. TAYLOR,
THOMAS COOPER.

August 24, 1804.

NORTHUMBERLAND, October 21, 1804.

ANDREW ELLICOTT, Esq.:

SIR: Mr. Taylor has sent me a copy of the letter from you, of October 10, 1804, with a request that I would reply to it, and his surprise at the conclusions you have drawn. I am not surprised at all.

I beg of you, sir, to be informed, and to acquaint the Board of Property that neither I nor Mr. Taylor ever expressed, or, for a moment, believed that the legislative or executive departments of Government (meaning, by the latter, the Governor) would authorize, for a moment, any measure that would infringe upon good faith, in the settlement of this controversy, the Governor knows to the contrary. We deny and disavow any such sentiment.

We have been, and still are of opinion that your perseverance in requiring the patent to contain a clause unnecessary, and worse than unnecessary, is to us suspicious. We cannot account for your conduct, we differ from you in opinion, and we will not aid you in a measure which we are decidedly convinced is not only illegal and unauthorized, but highly inexpedient, in every point of view.

Your letter has not convinced us of the propriety of your conduct toward the State, or its fairness toward us. We want no further controversy on the subject, with you or the Board. Our opinions remain as heretofore.

I am, for myself and my colleague,

With due respect, &c.,

(Signed)

THOMAS COOPER.

APPENDIX XI, (p. 45.)

The letter from the Commissioners of the Court at Trenton to President Dickinson, as given in the text at page 45, was signed also by Cyrus Griffin. The *original* of that letter, mislaid so many years, is now in the hands of Mr. Edward Herrick, of Athens, Pa. It is in the handwriting of Mr. Whipple. Attached to it is a letter from President Dickinson, of which a copy follows:

“WILMINGTON, *March 30th, 1793.*

“Yesterday, on my Return from a Journey, I received thy letter of the twenty-fifth instant.

“It gives Me a very particular Pleasure, that I have found the Letter from the Commissioners.

“Confiding that it will be immediately delivered to the Supreme Executive of Pennsylvania, it is inclosed.

“I am, with great Respect,

“thy sincere Friend,

“JOHN DICKINSON.

“TIMOTHY PICKERING, Esq.,

“*Philadelphia.*”

It would seem that Col. Pickering thus came into the possession of the original in 1793, but there was no real publicity given to it until the trial of *Vanhorne vs. Dorrance* in 1795. The indorsement upon it by Timothy Matlack shows that it was received by the Supreme Executive Council January 2, 1783.

APPENDIX XII, (p. 17.)

It is not often that the history of a country is detailed in the witness box. To complete the record in this case I give the depositions read in the trial of *Vanhorne vs. Dorrance*; one of Joseph Shippen, Esquire, on the part of the plaintiffs, detailing the earliest entry of Pennsylvanians into the Wyoming Valley in 1757; the other of Parshall Terry on the part of the defendants, giving a continuing narrative of events from 1762 to 1784.

CIRCUIT COURT OF UNITED STATES,
Pennsylvania District.

LESSEE OF CORNELIUS VANHORNE

vs.

JOHN DORANCE.

Joseph Shippen, Esquire, a witness, produced, sworn, and examined on the part of the plaintiff, deposeth and saith, that he was at Wyom-

ing in the fall of the year 1757, when he was a captain of the Provincials in the regiment called the Augusta regiment, first commanded by Colonel Clapham and afterwards by Colonel Burd; that he went with other officers and soldiers of the Provincials to the amount of about one hundred and fifty as a guard to John Howes, Edward Shippen, and James Galbraith, Esquires, commissioners appointed by Governor Denny of Pennsylvania, a part of whose business was to build houses for Teedyuscung and other Indians at Wyoming, (as deponent understood,) and some houses were built; that at this time there were no white people there, nor anywhere above Augusta nor below that for about thirty miles, except one Armstrong's family at Fort Halifax, it being the time of war with the Indians; that deponent heard nothing at that time of any settlers from New England in that country, nor for some years after, deponent having marched with Forber's army in 1758, with General Stanwix in 1759, and went to Europe in the spring 1760, from whence he returned in the fall of 1761; that the 9th of April, in the year 1771, the deponent was appointed by Governor John Penn, together with James Tilghman and John Lukens, Esquires, to sell the proprietary lands at Wyoming, agreeably to certain instructions now shown to him, signed by the said John Penn, which business was effected by them at Easton, and report made by them agreeably to the papers, being a report signed by the said James Tilghman, the deponent, and John Lukens, and a list accompanying it, and also now shown to him, signed with their names, of which the deponent testifieth and saith that they contain the truth to the best of his knowledge.

This deponent being examined on the part of the defendant, saith that he understood that Teedyuscung had expressly agreed with Governor Denny, at a treaty held at Easton, that houses should be built for him, and other Indians of the Delaware nation, at Wyoming, and that the houses above mentioned were built by the Commissioners in consequence of that treaty; that after the houses were built this deponent, with the guard, escorted the Commissioners to Fort Augusta, and left Teedyuscung in possession of them.

JOSEPH SHIPPEN, Jr.

City of Philadelphia, ss:

Sworn before me, this 23d April, 1793.

MATTH. CLARKSON,
Mayor.

RICHARD FENN, LESSEE OF ARCHIBALD STEWART,
vs.

WILLIAM SLOCUM.

RICHARD FENN, LESSEE OF CHARLES STEWART,
vs.

SAMUEL ALLEN.

RICHARD FENN, LESSEE OF CORNELIUS VANHORNE,

vs.

JOHN DORRENCE.

RICHARD FENN, LESSEE OF THOMAS LOWRY,

vs.

TIMOTHY PICKERING.

Ejectments in Circuit Court of the United States, Pennsylvania, for lands in Luzerne county.

The deposition of Parshall Terry, of Wyaloosing township, in the county of Luzerne, State of Pennsylvania.

Philadelphia, ss :

On the 25th day of April, 1794, before me, James Biddle, Esquire, president of the courts of common pleas in the first district of Pennsylvania, came personally Parshall Terry, and being duly sworn, doth say that in the year 1762, he then being an inhabitant of Goshen, in the then province of New York, and he then also being a proprietor in the Connecticut Susquehanna purchase, being informed that the company of proprietors had granted two townships, ten miles square each, as a gratuity to the first two hundred settlers, they being proprietors, (or in proportion to a less number,) conditioned that said settlers go on and remain in possession for the company for the term of five years; that as near as he can recollect some time about the last of August of the same year the deponent, with ninety-three others, mostly from Connecticut, went to Wyoming; that they carried on, and took with them horses and farming utensils for the purpose of carrying on the farming business; that he well recollects the names of a number who went on in company with him, whose names are as follows, viz :

John Jenkins,	Stephen Gardner,	Samuel Richards,
William Buck,	David Gnarvin,	Daniel Baldwin,
Oliver Smith,	John Comstock,	Eliphalet Stevens,
Abel Pierce,	— Jewel,	Augustin Hunt,
Obadiah Gore, junior,	Ezra Dean,	William Stevens,
Daniel Gore,	Daniel Lawrence,	Ephraim Seely,
Isaac Underwood,	Ezekiel Pierce,	David Honywell,
Isaac Bennet,	Elkanah Fuller,	Jonathan Weeks,
James Atherton,	Benjamin Ashley,	Jonathan Weeks, jr.,
Ebenezer Searls,	Stephen Lee,	Philip Weeks,
Ephraim Tyler,	— Hover,	Uriah Stevens,
Ephraim Tyler, junior,	Timothy Holtester,	Gideon Lawrence,
John Dorrence,	Timothy Holtester, jr.,	Silas Park,
Timothy Smith,	Isaac Holtester,	Moses Kimbell,
Jonathan Slocum,	Thomas Marsh,	Nathaniel Terry,
Benjamin Tolles,	Matthew Smith,	Wright Smith,
Benjamin Shoemaker,	Benjamin Davis,	Nathaniel Chapman,
Simon Draper,	George Minor,	and Rev. Wm. Marsh,
John Smith,	Nathan Hurlbut,	a Baptist preacher.

The deponent saith that on their arrival at Wyoming they encamped at the mouth of Mill Creek, on the banks of the Susquehanna, where they built several huts for shelter; that they cut grass and made hay on Jacob's plains; that they were shortly after joined by many others; that their whole company on the ground were one hundred and fifty or upwards; that they continued on the ground, according to his best recollection, about ten days; that the season being far advanced and finding that it would be difficult to procure provisions at so great distance from any inhabited country, the committee of the settlers, viz: John Jenkins, John Smith, and Stephen Gardner, thought proper and advised us to return, which was agreed to, and the greatest part of the company withdrew, the deponent being one; that a small number were left on the ground, who tarried some time longer, as the deponent understood. The deponent says that at the time they arrived at Wyoming there were not any inhabitants in that country to his knowledge except one, Teedcuscung, an Indian chief, and a number of Indian families. The deponent did not discover any appearance of any improvements being made by white people previous to the deponent and the company aforesaid going on to the lands.

The deponent further saith that at the time they withdrew they secured their farming utensils on the ground, to be ready for the spring following, as they expected to return at that time. He also saith that early in the month of May, (as near as he can recollect,) in the year 1763, he, the deponent, with a small number of others, went on to Wyoming to renew their possessions; that they were soon joined by a large number, being mostly those who had been on the preceding year; that they took on with them horses, oxen, cows, and farming utensils; that they proceeded to plowing, planting corn, and sowing grain of different kinds, building houses, fences, and all kinds of farmer's business; that they made large improvements in Wilkes-Barre, Kingston, Plymouth, and Hanover, (as they are now called;) that they improved several hundred acres of land with corn and other grain, and procured a large quantity of hay; that they carried on their business unmolested until the month of October; that during their residence at Wyoming this season, according to his best recollection, there were about one hundred and fifty settlers, who made improvements, though not so great a number on the ground at any one time; that he also well recollects lands being laid out and lotted on the Susquehanna river the same year, and that he, the deponent, drew a lot at that time in Wilkes-Barre, (as it is now called;) that on the 15th day of October, the settlers being in a scattered condition on their respective farms, they were attacked by the savages upon surprise in every part of their settlement, and all at or near the same time; that near twenty were killed of the settlers, the others taken and dispersed. The whole of the property of settlers then on the ground fell into the enemy's hands. The deponent recollects the names of several that were killed, viz: the Rev. William Marsh,

Thomas Marsh, Timothy Holtister, Timothy Holtister, junior, Nathaniel Holtister, Samuel Richards, Nathaniel Terry, Wright Smith, Daniel Baldwin and his wife, Jesse Wiggins, and a woman by the name of Zeraiah Whitney. The deponent also recollects that Isaac Holtester, one Mr. Shepherd, and a son of Daniel Baldwin, were taken prisoners, as he understood. Several others were killed, whose names he does not recollect.

The deponent further saith that early in the year 1769 he was informed that the Connecticut-Susquehanna Company had resolved to renew their possessions at Wyoming; that they had granted one township of five miles square to the first forty that should go on and take possession, and four townships, five miles square each, to two hundred others that should also go on and take possession for the company, or in proportion to a less number, the said settlers to remain in possession for five years; that the deponent was admitted as one of the first forty; that he went, in company with more than one hundred others, some time the last of April or beginning of May; that upon their arrival at Wyoming they found near fifty of the Susquehanna Company, who had gone on early the same year. He was also informed that several had been taken by the Pennsylvanians and sent to Easton goal. The deponent further says they found one Amos Ogden, who it was said belonged to New Jersey, and about eight or ten others, in possession of a trading-house at Wilkes-Barre, (as it is called,) and at the same place where the deponent, and others of the Susquehanna Company, had built houses in the year 1763; that the said Ogden and his party had some small improvements on the lands where the deponent and others had improved in the aforesaid year 1763.

The deponent further says that to the best of his recollection there were upwards of one thousand on the ground at Wyoming of the Susquehanna Company, in the year 1769 aforesaid, though he believes not more than three hundred at any one time: that they proceeded to improving their old possessions, and made large additions to their improvements; that they plowed and tilled several hundred acres of corn and other grain, built houses, and repaired fences, in Wilkes-barre, Kingston, Plymouth, and Hanover, which towns were laid out and lotted, fenced, and carried on a large branch of farming business, peaceably and unmolested, until some time in June, the same year, when a Colonel Francis, said to belong to Philadelphia, accompanied with a large party of armed men, appeared at Wyoming, and drew near to our block-house at Wilkes-Barre, and demanded a possession of our houses and possessions, and threatened, in case of refusal, he, the said Francis, would set fire to our houses and kill our people. After using many threats, he, the said Francis, withdrew with his party. The deponent says the Connecticut settlers (as they were called) raised great quantities of grain of various kinds—several thousand bushels; that some time in the month of September, a small part of the settlers being at work at some distance from their block-

houses, were attacked by a party of men, said to be commanded by the Ogden's; several of the settlers were beat and wounded; that some time in the month of November, as near as the deponent can recollect, Ogden's party, having increased to two hundred or more, as it was said, all armed. They erected a battery near our block-houses, in Wilkes-Barre, on which they mounted an iron cannon carrying a four-pound ball, and threatened us with immediate destruction unless we surrendered, whereupon an agreement was made between our committee, Stephen Gardner and John Smith, on the part of the Connecticut settlers, and Ogden's and others on the part of the Pennsylvanians, as they were called, whereby the Ogden's and others of their party were permitted to take possession of their block-houses and our possessions at Wyoming. Several of the settlers were sent to goal; some to Easton, some to Philadelphia. The rest of the settlers were dispersed, except about fourteen, who were permitted to tarry on the ground to take care of our cattle, horses, and other effects, which in the agreement were to be restored to us; however, to the best of this deponent's knowledge, neither the deponent, nor any of the Connecticut settlers, had any of their property restored to them, or any compensation therefor, except a small number of cattle, which the settlers found on their returning to the ground the next spring following. The property aforesaid was destroyed and taken off, as it was said, by the Ogden's and their party. The deponent further says that on or about the 1st day of April, 1770, he, the deponent, with a large party of the old settlers returned to Wyoming, and removed on many families, and recovered their old possessions; that they found the fourteen Connecticut settlers, which were left on the fall preceding, still in possession of a small fort at Wilkes-Barre. The Ogden's also, and a small party, were also in possession of a garrison; that soon after our arrival a small party of our people were fired upon by Ogden's party. One of the Connecticut settlers was killed, by the name of Stager; that the Connecticut settlers were soon increased to two hundred or upwards, and proceeded to make large improvements on their old farms, with large additions thereto; that they were peaceable and unmolested for a number of months until some time in September, when the Ogden's and others, having collected a large reinforcement from New Jersey and Pennsylvania, as it was said, they made an attack upon our settlers in their houses at Wilkes-Barre, in the night season, and wounded a number of our people, and took the whole of them prisoners; that the next morning following the Ogden's and their party appeared at Kingston, surrounded our people in their houses, and demanded a surrender of our possessions. This was complied with by the committee on the part of the settlers, that among other things seventeen of the settlers were permitted to remain on the ground with their families, the deponent being one that was allowed this indulgence; that all the settlers, except the seventeen aforesaid, were plundered of all their property by the Pennsylvania

party: that in the month of December, the same year, a small party of the old settlers, under the command of Captain Lazarus Stewart, came on to the ground and took Ogden and his party prisoners, and retook the possession of the country; that Ogden and his party were shortly afterward dismissed and dispersed.

The deponent further says that in January, 1771, the Ogden's appeared again on the ground with a large party of about one hundred and fifty, as was said, accompanied with one Ketchlin, a sheriff, as he was called. They surrounded our block-houses and demanded a surrender, which was refused by our party. They commenced a heavy fire upon us. They were ordered to withdraw, but still crowded upon us. The fire was returned from our block-houses. Nathan Ogden was killed. The party then withdrew. That the evening following Captain Stewart, and a small party with him, retired and left the deponent, and about ten or twelve others, with their families; that the next morning following the deponent and the others, about ten or twelve, as aforesaid, were all taken prisoners by Charles Stewart and others; robbed of all our property; our families drove off. The deponent, and the others taken with him, were sent under a guard to Easton. The deponent, and three others, were confined in Easton goal, and the others were sent to Philadelphia goal, as was said. The deponent, about six weeks after, broke goal and made his escape, and went to Goshen, in the State of New York; that some time in the month of July, 1771, the deponent again joined a party, mostly of the old Wyoming settlers, under the command of Captains Zebulon Butler and Lazarus Stewart, and repaired to Wyoming. Were shortly after reinforced to the number, as near as he can recollect, of about one hundred in the whole; that on their arrival at Wyoming they found the Pennsylvanians in possession of a garrison, commanded by a Colonel Asher Clayton, as was said, with about fifty men, armed; their garrison mounted a cannon carrying a four-pound shot; that Butler and Stewart, with their party, the deponent being one, soon laid siege to the garrison; that not having any artillery they made several wooden cannon; that the siege continued twenty-six days, until the 15th day of August, when articles of agreement were entered into between Captains Stewart and Butler, and others, on the part of the Connecticut settlers, and Colonel Clayton, and others, on the part of the Pennsylvania claimants. The garrison was given up to the Connecticut party. The families that were in the garrison with Colonel Clayton were permitted to tarry on the ground about two weeks, and to take of all their property, to the best recollection of the deponent; that the Connecticut settlers went into full possession of their lands and former improvements, and were increasing and extending their settlements for a number of years; that in the year 1775, that in the month of December, a party from Northumberland and elsewhere, under the command of a Colonel Plunket, as it was said, made an attempt to enter Wyoming in an hostile manner,

but were defeated by the Wyoming or Westmoreland militia under the command of Colonels Butler and Denison; that the settlements were increasing until the 3d day of July, 1778, when Colonel John Butler, with a party of savages and tories, entered Wyoming, defeated the militia, killed more than two hundred men, to the best of the deponent's knowledge, drove off the surviving inhabitants, and burned, plundered, and otherwise destroyed the greatest part of their houses and other effects; that some time early in the month of August, the same year, Colonel Zebulon Butler and Denison, with a small party of the surviving inhabitants, returned to Wyoming, the deponent being one. They retook possession of the country; that a number of families returned to Wyoming the same year, and were increasing a number of years, although obliged to live in a garrison to defend themselves against the savages, as they were repeatedly harassed by the Indians during the late war. Numbers of the inhabitants were killed and captured, and the survivors repeatedly sustained losses of property by the frequent incursions of the enemy.

The deponent further says that in the month of May, 1781, one hundred and fifty families, or more, of the inhabitants, the deponent being one, were again dispossessed, disarmed, robbed of their property, and drove from Wyoming, at the point of the bayonet, in a barbarous manner, by the Pennsylvania troops, and other Pennsylvania claimants, under the command of Major James Moore, Alexander Patterson, and others; that the inhabitants who were drove off regained their possession near the close of the same year, and have since been increasing; that he, the deponent, believes there are now residing in the county of Luzerne, as Connecticut claimants, near ten thousand souls; and further, the deponent saith that at the time he went on to the Susquehanna lands, in the year 1762, he supposed the same to be clearly within the jurisdiction of Connecticut, and that he did not at that time, nor for several years after, to his knowledge, know or hear of any other purchase being made of the Wyoming lands, except that of the Connecticut-Susquehanna Company.

Upon being cross-examined, the deponent saith, when he first went to Wyoming, Teedeuscung, and the Indians, inhabited log houses, but whether they were built for them by the Governor of Pennsylvania the deponent does not know; that Timothy Hollister laid out the lots in the year the Indians cut off the settlers the first time; that the said Timothy Hollister was a surveyor from Connecticut, employed by the Susquehanna Company; that about the middle of August the deponent left the settlement on a visit to his family in New York State, and returned on the 8th of October. On the day after the attack on the settlement, the deponent having made his escape to Colonel Strouds, on the Delaware, he, the deponent, was informed by Eliphilet Stephens and William Stephens, who had made their escape, that they had been warned off by Bill Gilloway, an Indian, previous to the attack, and that unless they did move off or

build a block-house, and fortify themselves, that they would certainly be cut off; that the deponent was not of the party who quarreled in September, and the deponent does not know whether that party went to Philip Johnson's house to destroy it, as he was in the garrison at Wilkes-Barre during the whole time the party was out; that the deponent does not know any one person who took anything from himself during the time that the fourteen men had leave to tarry; that he left all his effects behind him, and went into the country; that he was not present at the time Stager was killed, and does not know whether he was armed or not. The deponent does not know who plundered the settlers on taking the Forty Fort, nor that there was any plundering, but that he saw plundering the next day at Wilkes-Barre, and from that time till the 25th of December following; that he does not know who killed Ogden, but his belief is that John McDonald killed him; that he does not know whether Charles Stuart robbed any of the settlers; that Major Moore commanded the troops in the garrison at the time the people were removed; that he saw Major Moore commanding troops at that time, and that the deponent was ordered off by the troops under his command; that at the time he, the deponent, was at Wyoming, in the year 1769, with Major Durhee, he did not know of Governor Penn's purchase of the Indians at Fort Stanwix, and was never informed of it until several of the Connecticut people were taken to goal, which was after his return; that he, the deponent, was sent to goal on a charge for committing a riot at Wyoming, but never indicted by a grand jury to the best of his knowledge.

The deponent further says that Captain Amos Ogden, Nathan Ogden, and John Dick, appeared in command, but he did not see them plunder anything; but deponent saw David Ogden often take the cattle of the Connecticut people and kill them, and likewise Robert Duche, William Sims, Martin Tid, and John Tid, Benjamin Looze, and a number of others, twenty at a time, would drive up our cattle and take them.

PARSHALL TERRY.

Sworn before me.

JAMES BIDDLE.

APPENDIX XIII, (p. 39.)

Attached to the Indian deed of 11 July, 1754, now in the files of the Circuit Court of the United States, for the Eastern District of Pennsylvania, are certain depositions intended to sustain its due execution. These, with the adverse facts referred to in the "note" on page 39, would seem to complete the history of this deed. The

words written in the "erasure," (see description in deed, at page 13,) are these: "A northward line ten miles East of the River to the "forty second or beginniug of the forty third degree of North latitude and so to extend West two degrees of longitude, one hundred "and twenty miles."

This deed is printed in full in *II Penna. Arch.*, p. 147. It was executed at different times, by the different Sachems, and witnessed by different subscribing witnesses. The affidavits annexed to it are as follows:

"John Henry Lydius, of the city of Albany, aged fifty-six years, testifies and says that some time in the summer season, in the year of our Lord A. D. 1854, at a time when there was a general congress or treaty held with the Indians, met by the Governor and Commissioners of the several Provinces at said Albany, a certain writing, said to be a deed of a large tract of land lying on Susquehanna river, claimed by the Five Nations, of which said large tract of land several gentlemen from the colony of Connecticut was endeavoring, at the said treaty, to obtain a deed of sale of the principal sachems and heads of the tribes of the Five Nations. And that on a certain day during the time of said congress, came into the deponent's mansion-house, at Albany, Major Ephraim Williams and Captain Joseph Kellogg, Esquires, the said Kellogg being master of the language of the Mohocks, has often improved as a publick interpreter, and was at this time improved in the above said business of procuring a deed as above; and also the deponent further saith, that on that same day came into his said dwelling-house several of the sachems and principal men of the Mohocks, or Five Nations, so called. One of said sachem's name was called Kahiktoton, a sachem of the Senecas; another, called Abraham Peters, elder brother to Hendrick, and chief sachem of the Mohock tribe; a third, whose name was William Tharigeoris, a Mohock chief, called of the Turkle tribe; a fourth, whose name was called Brant Conwignoge, a chief or principal man of the Mohocks; a fifth, called a sachem named Gayswigtione; a sixth, whose name was Canagegaie, two sachems of the tribe of the Anondagehs. And at that time a deed was produced, being brought to deponent's house by some of those gentlemen from New England, who were endeavoring to obtain a deed of the Five Nations of Indians. Said deed lying on the table, the deponent had full inspection of the same, and saw it to be a deed of release and conveyance of a large tract of land lying on Susquehanna river, to a great number of persons mostly belonging to the colony of Connecticut. And at the same time, the deponent saw all the above-named sachems or principal men sign the said deed, by making their marks thereto severally. And the deponent also, at the same time, saw the said Williams and Kellogg set their hands as witnesses, being both long since deceased, and that the deponent fully believes that the said sachems were well acquainted and thoroughly understood what they transacted, and

that the said sachems were, at the time of their signing, sealing, and delivering of said deed, sober and undisguised, and that it has been the well known custom of the Indians, that their chiefs or sachems represent the bodys of their respective tribes in all transactions respecting sales and conveyances of lands, and such conveyances have always been esteemed and allowed good and valid.

"JOHN H. LYDIUS.

"Sworn before me, in the city of Albany, in the Province of New York, this 23d day of December, A. D. 1760.

"SYBRANT G. VAN SCHAICK,
"Mayor."

"CITY OF ALBANY, ss:

In the Province of New York, December 23, 1760. Personally appeared before me, James Sharp, aged thirty-nine years, and Martin Lydius, aged twenty-five years, Sybrant Van Schaick, junior, and Johannes J. Wendel, and being duly sworn upon the Holy Gospel of Almighty God, made solemn oath, (after particularizing the several chiefs whose signatures they had witnessed,) that it has been the constant and well known custom of the Indians of the Five Nations, as well as others in America, that their sachems or chiefs should represent and act in behalf of their respective tribes in all transactions respecting sales and conveyances of lands, and that such conveyance has always been allowed, and esteemed good and valid. They also further say, that it is their firm belief that the sachems, before named, were well acquainted with, and thoroughly understood what they transacted, and that they were sober and undisguised at the time of their executing the foregoing deed, and further say not.

"JAMES SHARPE,
MARTIN LYDIUS,
SYBRANT V. SCHAICK, Jr.,
JOHN WANDELL,
JACOB VAN VOORST, Jr.

"Sworn before me, in the city of Albany, in the Province of New York, the day and year before mentioned.

"SYBRANT G. VAN SCHAICK,
"Mayor of Albany.

"The consideration which was made to the Indian sachems which signed the foregoing deed of sale, being accidentally omitted in the foregoing depositions, is the reason of the following depositions being taken by themselves. The aforesaid John Henry Lydius further deposed and says: That some time in the month of July, A. D. 1754, Timothy Woodbridge, Esquire, who was employed by the people of Connecticut colony to make a purchase of the Five Nations of a tract of land lying on Susquehanna, as contained in the foregoing deed, asked my assistance in the prosecution of said purchase, and the said Woodbridge left in my hands a considerable sum of money, to the

amount of a thousand or eleven hundred Spanish dollars, to pay such sachems of the Five Nations that should appear to make sale of the aforesaid lands for their several tribes, notice being given to the said tribes of Indians that if they were disposed to make sale of the tract of land contained in the foregoing deed, they might receive their pay at Albany, at the dwelling-house, and by the hands of the deponent. Accordingly, as the sachems of the several tribes came to the deponent's house on said business, the deponent agreed with such as appeared to dispose of their interests in the premises, from time to time, for such sums as they were satisfied with, and the same was paid by the deponent, until the aforesaid sum was paid. Afterward, the deponent sent to the said Woodbridge for further supplies of money to go forward with the said purchase, and received between four and five hundred dollars as aforesaid, and still further supplies were remitted, until the deponent was enabled to pay the whole stipulated for with the several sachems of the several tribes, which whole payment, that the deponent made, was to the amount of one thousand seven hundred and five Spanish dollars.

"JOHN H. LYDIUS.

"Sworn before me, in Albany, this 6th day of August, 1761.

"SYBRANT G. VAN SCHAICK,

"*Mayor.*"

"Further, the aforesaid Sybrant Van Schaick, junior, testifies and says, that when he was called to evidence to the signing of several of the sachems to the foregoing deed, at the house of Colonel John Lydius, in Albany, he saw a large bag of money delivered to the Indians by the said Lydius, in consideration of said purchase, which bag the deponent judged to contain three or four hundred Spanish dollars.

"SYBRANT V. SCHAICK, Jr."

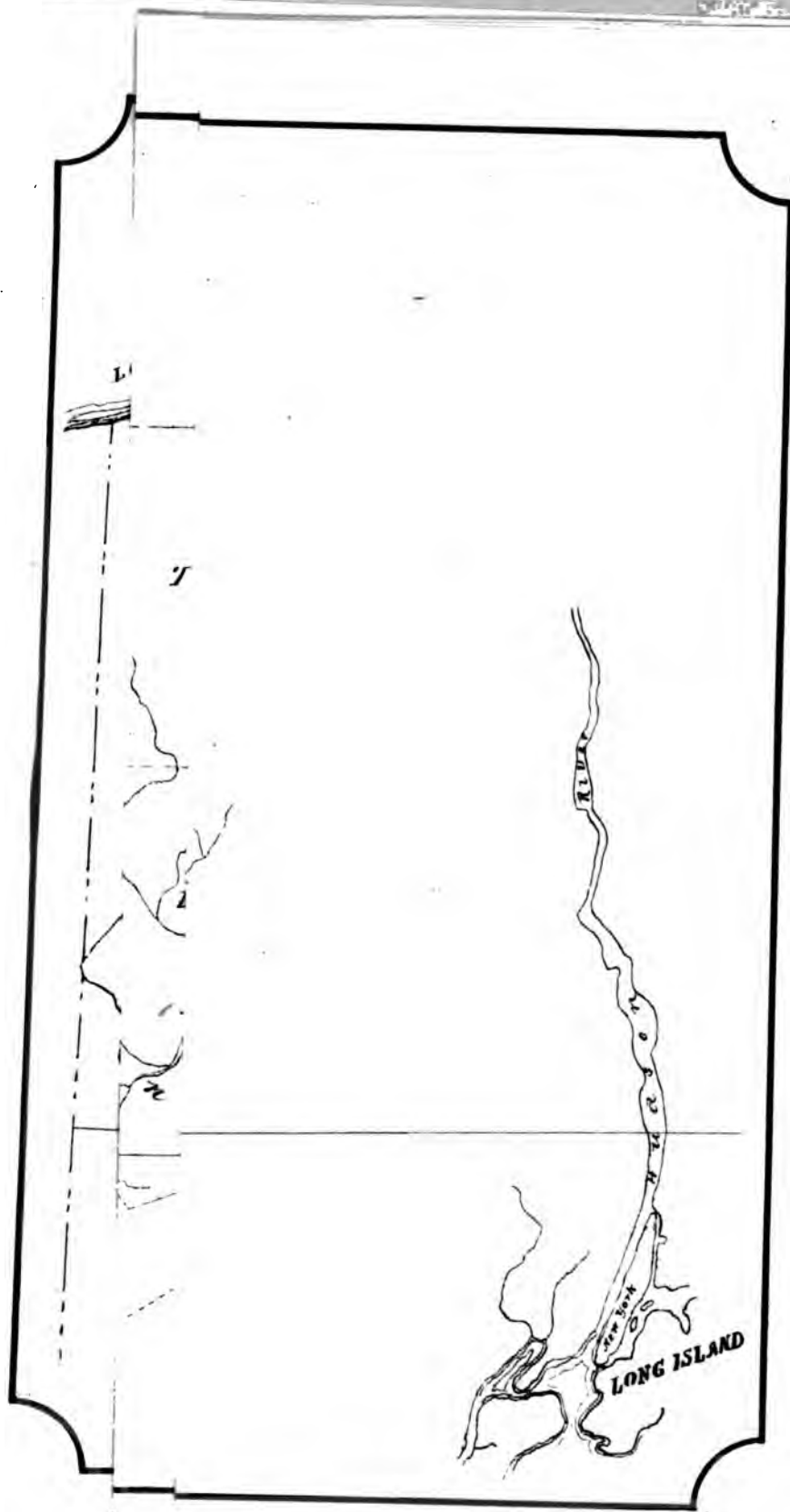
"Further, the aforesaid James Sharp deposeth and sayeth, that when he was called to evidence to several sachems signing the foregoing deed of sale, he saw the Indians that signed the said deed counting money in the said Lydius' stoop at his door, and appeared to be possessed of a large sum, and further saith not.

"JAMES SHARP.

"Sworn before me, in Albany, this 6th day of August, 1761.

"SYBRANT G. VAN SCHAICK,

"*Mayor.*"





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